11 New South Wales

A1 Agricultural commodities[1]

Grain Marketing Act 1991

The Grain Marketing Act vested ownership of all barley, sorghum, oats, canola, safflower, sunflower, linseed and soybeans grown in New South Wales in the New South Wales Grains Board. A group of New South Wales Government representatives and four industry representatives completed a National Competition Policy (NCP) review of the Act in July 1999. A majority of the review group recommended removing by August 2001 all restrictions on competition in marketing grains except those on export sales of barley, which were to be reviewed again by August 2004.

Following the collapse of the grains board in September 2000, which left growers preparing for harvest without a buyer, the government announced: the sale to Grainco Australia Limited of a five-year exclusive licence to act as agent for the board; the immediate removal of all restrictions on the marketing of sunflower, safflower, linseed and soybeans, and of domestic marketing restrictions for feed barley, canola and sorghum; and the sunsetting of all remaining restrictions (that is, on domestic marketing of malting barley and export marketing of feed barley, malting barley, sorghum and canola) in September 2005. The *Grain Marketing Amendment Act 2001* formalised these reforms.

The National Competition Council found in 2002 that New South Wales had not shown that retaining some competition restrictions in grain marketing until 30 September 2005 was in the public interest. In particular, given the lack of evidence for premiums from restricting export marketing and in the aftermath of the board collapse, the Council considered that the government could have authorised the entry of other grain marketers and collected from them a levy to fund the payout to growers of the 1999-2000 pools. (For a full discussion of this evidence, see NCC 2003a).

The government subsequently explored the feasibility of bringing forwards the sunsetting of the remaining restrictions, but reported in June 2003 that it could not do so because the restrictions were subject to a court-ordered Scheme of Arrangement and binding deeds of agreement between Grainco Australia, the administrator of the board and the government.

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

The holder of the exclusive licence, Grainco Australia, merged with GrainCorp Ltd in October 2003. The combined entity, also known as GrainCorp Ltd, has aided the transition to a deregulated environment post-September 2005 by allowing other parties to export canola and sorghum in 2003-04 and to trade malting barley domestically in 2004-05 for a fee of $5 per tonne.

For the 2004 NCP assessment, the Council accepted that the government could not bring forwards the expiry of remaining restrictions on grain marketing from September 2005, but nonetheless retained its 2002 assessment finding that the state had not met its Competition Principles Agreement (CPA) clause 5 obligation. For this 2005 assessment, the Council considers that it is now appropriate, in light of the imminent expiration of the remaining restrictions, to assess New South Wales as having met its CPA obligations in relation to grain marketing.

Poultry Meat Industry Act 1986

The Poultry Meat Industry Act prohibited the processing of poultry unless grown under a contract approved by the Poultry Meat Industry Committee (a committee of grower, processor and independent members) or grown at a processor's own farm. The committee also determined the fee paid by processors to growers for the supply of growing services.

In its 2003 NCP assessment the Council found that New South Wales had not met its CPA clause 5 obligations relating to this Act because, notwithstanding two reviews and some reforms, it had retained the key restrictions on competition without demonstrating that those restrictions are in the public interest. The Council consequently recommended that the Australian Government Treasurer deduct 5 per cent of the 2003-04 competition payments to New South Wales.

In 2004, the government commissioned a further review of the Act by consultants Ridge Partners. The Council endorsed this action in the 2004 NCP assessment and recommended a specific suspension of 5 per cent of 2004-05 competition payments recoverable on the completion of an appropriate review of the Act and, where necessary, timely implementation of NCP compliant reforms.

Reporting in October 2004, the review recommended that the government adopt new regulatory arrangements that avoid the use of centralised compulsory price fixing and contract approval. In May 2005, the government introduced the Poultry Meat Industry Amendment (Prevention of National Competition Policy Penalties) Bill 2005. Passed on 22 June 2005 the legislation removes the key restrictions on competition and instead:

- requires contracts to address matters identified in regulation, which will also set out standard (or default) provisions for such matters, but allow contracts to use alternative provisions to the same or other effect

- requires processors to notify the Director-General of Primary Industries of new contracts with growers, but does not require processors to provide a copy of such contracts (or obtain approval)

- re-establishes the Poultry Meat Industry Committee, composed of three independent persons (that is, without industry representatives), with the functions of:

  – preparing voluntary codes of practices for bargaining, and guidelines for the content of agreements

  – making recommendations to the minister on matters that agreements should be required to address and related standard provisions

  – facilitating the resolution of disputes between a processor and its growers

  – inquiring into, and advising the minister on industry matters

- establishes a Poultry Meat Industry Advisory Group, composed of processor and grower representatives plus an independent chair, which the committee is obliged to consult.

New regulations will, in addition to setting out optional model contract terms, allow the committee to mediate and, where mediation fails, arbitrate in contract disputes, but will not give the committee the power to arbitrate on price matters, and disputing parties will be free to choose alternative dispute resolution providers and procedures.

The government intends the legislative amendments to commence as soon as possible, while retaining the existing protection on growing fees until 31 December 2005, and for the full regulatory system to be in place by 1 January 2006.

The Council is satisfied that these legislative changes constitute a firm transitional arrangement that is in the public interest and, hence, it assesses that New South Wales has met its CPA clause 5 obligations arising from the Poultry Meat Industry Act.

Marketing of Primary Products Act 1983 (rice marketing)

All rice grown in New South Wales is vested in the New South Wales Rice Marketing Board by Regulations and Proclamations made under the Marketing of Primary Products Act. No-one other than the board and its agents may market New South Wales grown rice, either domestically or on export markets. The board delegates its marketing functions to the grower owned Ricegrowers Co-operative Limited, which trades under the name SunRice, under an exclusive licensing arrangement. SunRice also controls the storage and processing of rice.

A group of government and industry representatives completed an NCP review of these arrangements in November 1995. The review concluded that the benefits of the export arrangements significantly exceeded the costs borne by domestic consumers and the economy. It recommended removing the monopoly over domestic marketing, but retaining the export monopoly, to reduce the domestic costs while retaining export related benefits. It proposed that the government apply to the Australian Government to establish a rice export licensing arrangement or, failing that, establish a state-based arrangement to secure a single export desk while deregulating the domestic market.

In its 1997 NCP assessment, the Council found that New South Wales had not met its CPA clause 5 obligations relating to these arrangements, because the domestic marketing monopoly remained in place.

Subsequently the New South Wales and Australian governments examined options for retaining a single export desk under Australian Government jurisdiction while removing the domestic rice market monopoly. However, in December 2003, following consultations with other states, the Australian Government formally advised New South Wales that it would not establish a single Australian rice export desk.

In March 2004, New South Wales notified the Council that it would commission a new NCP review of the rice marketing restrictions. In its 2004 NCP assessment, the Council endorsed this action and recommended a specific suspension of 5 per cent of 2004-05 competition payments recoverable on the completion of an appropriate review of the restrictions and, where necessary, timely implementation of NCP compliant reforms.

A more detailed schedule of events over the almost ten years from November 1995 to June 2005 is presented in box 11.1.

2005 Review

The new NCP review was completed in April 2005 by Integrated Marketing Communications P/L for the Department of Primary Industries. According to the report, which is available to the public on request, the review estimated a net public benefit from the restrictions of $46.5 million per year, and found no feasible alternative to vesting. It recommended the government retain both the export and domestic monopolies. It also recommended improving the accountability of the board to government (particularly in assessing the performance of SunRice) and improving price signals to growers. The government has accepted the recommendations of the review.

The review's evaluation of benefits and costs relied substantially on a joint submission by the board, SunRice and the Ricegrowers Association. The report broadly discusses the submission but generally gives insufficient details about the evidence therein.

Box 11.1: Progress in implementing the domestic rice market reforms recommended a decade ago

November 1995: NCP review recommends deregulation of the domestic rice market from 31 January 1999 while retaining the single desk for rice exports, preferably via Commonwealth regulation. If the single desk cannot be established under Commonwealth regulation, the review recommends that *'the NSW Government agree to provide a state based regime to secure single desk export selling for the NSW rice industry from 1 February 1999, whether by way on an attenuated vesting arrangement or otherwise, but which has minimal anti-competitive effects'.*

June 1997: In its first assessment the Council finds that NSW has not met its NCP obligations, but agrees to reassess progress after NSW undertakes to work with the Council to resolve the matter.

December 1997: NSW extends domestic rice marketing arrangements until 2004.

June 1998: The Council recommends a $10 million reduction to NSW's competition payments.

July 1998: The Council meets rice industry officials to explore a model for domestic market reform.

December 1998: A rice working group is established by the Australian Government Treasurer to examine options for a rice export single desk under Commonwealth jurisdiction.

January 1999: The working group recommends a model for a rice export single desk under Commonwealth jurisdiction.

April 1999: NSW agrees to the proposed model subject to the arrangements not putting export premiums at risk and all other states agreeing with the proposal.

June 1999: The Council states it is satisfied that the in-principle agreement by NSW meets the state's NCP obligations.

August 2000: By the time of the Council's 2000 supplementary assessment, NSW has not responded to a revised proposal from the Australian Government, so the Council recommends withholding part of the state's competition payments. NSW accepts the revised proposal and the Council withdraws its adverse payment recommendation.

March 2001: NSW agrees to the Australian Government consulting with other states and territories on the reform model.

November 2003: NSW introduces legislation to extend the rice vesting arrangements until 2009, stating that the Australian Government's consultations with other jurisdictions have been abandoned. NSW commits to re-reviewing the rice vesting arrangements.

December 2003: The Australian Government confirms that it will not establish a single rice export desk.

March 2004: NSW confirms that it will commence a new independent NCP review of the rice marketing arrangements.

October 2004: The Council recommends a specific suspension of 5 per cent of NSW's 2004-05 competition payments, recoverable on the completion of an appropriate review and, where necessary, the timely implementation of NCP compliant reforms.

December 2004: The Australian Government accepts the Council's recommendation for a specific suspension.

June 2005: NSW provides the Council with a copy of the NCP review report.

For instance, according to the report SunRice calculates that it earns an export premium of around $30 million per annum—that is SunRice receives around $30 million per annum more than it would if it received only world rice prices. The report describes in general terms how this was calculated and emphasises that the review team had access to the source data and calculations. The report accepts that, based on other research commissioned by SunRice in 2001, around 50 per cent of this premium—$15 million—is attributable to the single desk, rather than other factors such as packaging, branding and customer support services.

Estimating the gains (and losses) from price discrimination between markets requires sophisticated econometric modelling. There are several methodologies and the results can vary widely depending on the assumptions made. A sophisticated analysis will test for the effect of uncertainty, as single desk operators cannot have perfect information about demand elasticities and competitors' supply elasticities in all their markets, and will therefore make errors in attempting to divert supply from price insensitive markets to price sensitive markets, resulting in lower returns than might be possible with perfect information. The report is silent on the methodology and assumptions used by the research for SunRice, and on the credentials of whoever undertook it.

Similarly, the review attributes a $15 million benefit to the single desk arising from SunRice's lower seafreight costs to its key markets compared with those faced by its United States and Thailand competitors, but provides little explanation of how this benefit was estimated, other than noting the industry submission estimated a $30 million benefit but that some of this is due to a transient rise in freight rates and that only some of the remainder would be competed away under deregulation.

The review estimates an $18 million benefit of vesting arising from economies of scale in SunRice's rice milling operations. Again, apart from noting that this is based on the operating cost of a new mill and the cost to SunRice of processing 20 per cent less rice, the report presents little information on how this benefit was estimated. Moreover, it is by no means clear that SunRice's processing throughput would fall as much. Were the government to retain an export single desk while allowing domestic market competition, SunRice would retain at least the average 85 per cent of production that is exported and very likely a substantial share of rice production destined for the domestic market. Even with full deregulation, to the extent that significant scale economies exist as the review contends, SunRice could offer better returns to growers than new entrants, and thereby could generally be expected to retain a substantial processing throughput.

Overall, the report gives insufficient information to be confident that the research commissioned by SunRice has met satisfactory standards of rigour and objectivity.

The report also finds that the current statutory arrangements provide for better environmental outcomes and for more effective research and development than would be the case in an unregulated scenario, but fails to

present any supporting evidence, that is, an analysis of alternative mechanisms to achieve these objectives and experience with them from other agricultural industries.

The report finds that the domestic costs of restricting competition—such as welfare losses associated with higher domestic rice prices, the pooling of grower returns as well as bundling of returns on supply-chain investment—are $1.5 million per annum. This finding was based principally on analysis for the 1995 review by the then Department of Agriculture. But part of this analysis—an estimated $150 000 per annum loss arising from pooling—appears outdated when, as the report notes, a significant share of SunRice's payments to growers per tonne delivered now arises from non-core business activities.

The report also fails to recognise important matters, such as:

- Pooling of rice sales proceeds imposes certain risks on growers. For instance, growers have no opportunity to lay-off price risk by selling some or their entire crop for a cash price. Growers also cannot avoid exposure to the business risks of SunRice such as the risk that SunRice underperforms financially, perhaps due to changes in market circumstances or failed value-adding investments, or even that it could fail, as some statutory marketers have done in the past. Some growers are likely to prefer not to accept such risks if they had the choice. The report does not discuss this issue.

- According to the report SunRice is likely to generate premiums as a result of exercising market power principally in pacific island nations. In these markets, for instance SunRice's largest export market—Papua New Guinea, SunRice supplies 80 to 100 per cent of rice consumption, and is able to hold prices above their competitive level to the cost of pacific island consumers.[2] Australia has a longstanding foreign policy objective of improving the economic and social development of pacific island nations and accordingly the Australian community provides substantial official development assistance to this end. Consequently the community might attach a lesser weight to the additional funds generated by a statutory intervention in these markets than it might in other markets. The report does not recognise this possibility.

Lastly, the report states a preference for a deregulated domestic market with a single export desk, but contends that 'there is arguably no feasible failsafe mechanism … to protect these benefits other than through a national single desk, an approach previously ruled out'. This finding, which goes to the heart of the second leg of the CPA clause 5(1) test—that the objectives of the legislation cannot be achieved without restricting competition—was not evidenced by any exploration of alternatives, in particular relevant experience from the domestic deregulation of barley in South Australia and

[2] SunRice's exports to pacific island nations accounts for 20 to 25 per cent of the State's rice crop.

Western Australia, Graincorp's authorisation of canola and sorghum buyers in New South Wales or the sugar vesting exemptions administered by the Sugar Industry Authority in Queensland. All of these arrangements provide for a continuation of single desk arrangements for exports coincident with domestic deregulation. The Council considers that it was incumbent on the review to assess whether the state could liberalise domestic rice marketing by exempting from vesting, rice sold domestically, on conditions that protect the Board's export monopoly.

An option that should have been explored is to restrict who may buy rice from growers to those buyers authorised by a suitably reconstituted marketing board. Such authorisation could be conditional on these buyers accepting a contract that prohibits the export of this rice unless it has been substantially transformed, and that prohibits that sale of this rice domestically unless under a contract that prohibits exporting by the next buyer, and so on, in a similar manner to the distribution and resale restrictions that often imposed in other industry sectors. Normal commercial sanctions, such as contract termination and litigation, would be available to the board and, in turn, authorised buyers in the event of any breach of these conditions. The board's costs of administering and enforcing these arrangements could be recovered from authorised buyers.

In September 2005 the New South Wales Government provided supplementary analysis to the Council which noted:

> *In theory,…. 'Authorised Buyers' could be regulated such that they are free to trade rice on the domestic market, but are not permitted to export rice nor to on-sell to an exporter unless they are authorised to do so by the operator of the single desk. This would impose fewer restrictions on competition in the domestic market and, hence less efficiency costs on the economy.*

It quickly dismissed such an approach on the grounds that 'there is nothing to prevent an Authorised Buyer legally selling rice to a company in another state who is then outside the jurisdiction of the NSW legislation'. However it did not explore these limitations in any detail, nor did it examine alternatives—such as the contractual model set out above—to address the perceived difficulties.

Following further discussions on 14 October 2005 the Minister for Primary Industries, Mr Macdonald MLC, notified the Council that the New South Wales Government had agreed to reform regulation of the market for domestic trade in rice in New South Wales, proposing to introduce in 2006 an authorised buyer scheme, while retaining a single desk in relation to exporting of rice. Applicants for an authorisation will face minimum qualifying criteria but may lose their authorisation for a period if they breach its conditions, including by exporting rice. The scheme will be administered by the Rice Marketing Board subject to review by the Administrative Decisions Tribunal.

Assessment

As noted above the Council has important reservations about the New South Wales 2005 NCP review and specifically the evidence it presented that a monopoly on the marketing of New South Wales grown rice is in the public interest. The review was compromised, at least in part by the government making available insufficient resources for the review to either conduct its own econometric analysis or to retain recognised expertise to rigorously and transparently test the analysis submitted in the joint industry submission on which the review largely relied.[3] The Council voiced concern about this reliance at the outset of the review process but the reviewer gave assurances that the industry analysis would be adequately tested. As noted above, the report does not give the Council any confidence that this happened. (Moreover, the Council's confidence in the independence of this review was undermined when it learned—subsequent to the review—that the economic expertise was provided by a person previously employed with the Grains Council of Australia and responsible for advocating the Grains Council's longstanding policy opposing competition in the export of grain.) Notwithstanding these reservations the Council has come to the view that, for the moment and on the balance of probabilities, retaining an export monopoly is likely in the public interest.

The Council acknowledges the statement by the Minister that the New South Wales Government will allow competition in the domestic marketing of New South Wales-grown rice. This decision has however been too long in coming – it is ten years since the first NCP review recommended removing restrictions on the domestic market for rice – and the delay has denied growers, particularly those who wish to produce a specialty product such as organic rice, the opportunity to take more control of their business. Nevertheless the Council believes the government's scheme is a workable approach that will release the benefits of competition and innovation in the domestic market while safeguarding to a satisfactory degree the benefits that the export single desk may capture.

Consequently the Council assesses that New South Wales will have met its CPA clause 5 obligations arising from restrictions on rice marketing when it has passed legislation to give effect to the authorised buyer scheme proposed by the Minister for Primary Industries.

The Minister has undertaken that such legislation will be enacted by the New South Wales Parliament before 30 November 2005. If that does not occur, competition payment deductions should be imposed as recommended in the overview section of this report.

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[3] Similar to the approach of South Australia's 2003 NCP review of its Barley Marketing Act where the review panel employed a recognised academic expert to test analysis submitted by ABB Grain Ltd.

A5 Agricultural and veterinary chemicals

Agriculture and Veterinary Chemicals (New South Wales) Act 1994

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 up 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 Agriculture and Veterinary Chemicals (New South Wales) Act is the relevant legislation for New South Wales.

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 New South Wales has not met its CPA obligations in relation to this legislation.

Stock Medicines Act 1989

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 chemical 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. New South Wales (along with South Australia and the Northern Territory) conducted its own review of 'control of use' legislation in 1999. The Council's 2004 NCP assessment identified advertising restrictions in the Stock Medicines Act as the only significant outstanding matter for New South Wales. The *Stock Medicines Amendment Act 2004*, which repeals those advertising restrictions and implements operational improvements to the Act, was assented to on 30 November 2004. New South Wales advised that the amendments will commence once the relevant Australian Government legislation is amended to include controls on prescription-only stock medicines in accordance with the national Galbally review (see chapter 19) of drugs, poisons and controlled substances.

Although reforms have not commenced to operate due to factors beyond the control of the New South Wales Government, the Council must assess that the state has not met its CPA obligations in relation to this legislation.

A8 Veterinary services

Veterinary Surgeons Act 1986

New South Wales licensed veterinary surgeons and controlled the practice of veterinary surgery in the Veterinary Surgeons Act. An NCP review of the Act in 1998 recommended several reforms, and these were implemented in December 2003 via passage of the Veterinary Practice Bill 2003. The new Act continues to restrict ownership of veterinary practices: while it allows veterinary practices to take any form of business arrangement, one or more veterinary surgeons must hold the majority ownership. Agribusinesses are permitted to provide a limited range of veterinary clinical services, but not veterinary hospital services.

The Council sought from New South Wales, the public interest reasons for retaining partial ownership restrictions. New South Wales reported that 'the NCP review of the Act 'did not arrive at a unanimous position in relation to ownership restrictions' (Government of New South Wales, 2005, p. 16), although it posited some rationales for ownership restrictions including:

- a perception that non-veterinary owners were more likely to be driven by commercial considerations than registered veterinarians and hence be more likely to engage in 'cutting corners', over-servicing and exploiting the bond between owners and their animals

- perceived parallels with pharmacy regulation in that veterinarians, like pharmacists, dispense scheduled drugs so that public interest arguments for pharmacy ownership restrictions equally apply to veterinary practices.

The Council considers that a perception that non-veterinary owners of practices are more prone to unscrupulous behaviour does not constitute a public interest case for ownership restrictions. Moreover, other jurisdictions have removed ownership restrictions, having found feasible alternative measures to address the risk that non-veterinarian owners (who are not registered under the Act) may induce veterinarian employees to compromise professional standards. Making it an offence for a person to direct a veterinarian to practise in an unprofessional manner, for example, is one approach adopted to address these concerns in a way that does not restrict competition. The government also contended that the threat of deregistration against practitioners is more effective than civil or criminal action against non-veterinarian business owners. Again, however, it did not substantiate this claim—for instance, with experience from other professions and jurisdictions.

The argument that the public interest case for ownership of pharmacies is applicable to veterinary practices is not compelling. The outcome of the national review of pharmacy (the Wilkinson review and subsequent COAG working group report) was only that ownership restrictions be retained as a transitional measure given other significant proposed reforms. While there is a public interest case for requiring that pharmacists (and veterinarians) dispense scheduled drugs, this does not extend to owning the business.

In the 2004 NCP assessment the Council found that New South Wales had not met its CPA clause 5 obligations because it had retained a restriction on practice ownership and also had delayed commencement of the exemption for agribusinesses. The exemption of agribusinesses that provide limited veterinary services from the ownership restriction commenced in May 2005. The restriction on practice ownership otherwise remains however.

The Council recognises that New South Wales' reforms have resulted in a marked relaxation of the ownership restrictions and that the remaining restrictions are not particularly onerous given they allow for a mix of business and technical skills in veterinary practices. The exemption for agribusinesses is a further important reform initiative. Nevertheless, as the government has not shown there are no feasible alternatives to restricting veterinary practice ownership, the Council assesses that New South Wales has not met its CPA obligations in this area.

B1 Taxis and hire cars

Passenger Transport Act 1990 (taxis)

The Independent Pricing and Regulatory Tribunal (IPART) completed the NCP review of the Passenger Transport Act in November 1999. It concluded that 'restricting the number of taxi and hire car licences does not appear to generate any significant benefits for passengers, drivers, or anyone working in the industries other than the licence owners' (IPART 1999, 'Foreword'). It also concluded that taxi and hire car restrictions are not in the public interest. It recommended immediately freeing licence restrictions in the hire car sector, annually increasing the number of taxi licences by 5 per cent between 2000 and 2005 (that is, approximately 300 new taxis per year), and conducting a further review in 2003.

The New South Wales Government did not introduce the recommended reform program. It informed the Council in September 2004 that the Ministry of Transport issued 45 new perpetual licences in 2000, 107 in 2001, 13 in 2002 and 77 in 2003, and also that 200–300 short term and wheelchair accessible taxi licences were issued in each of these years. These data appear inconsistent with the findings of the recent interim report of the ministerial inquiry into the taxi industry, released in September 2004, which commented on the status of the implementation of the IPART recommendation to

increase the number of Sydney taxi licences by 5 per cent per year for five years. The interim report stated that:

> *[The IPART recommendation] was estimated to have increased the number of Sydney taxis by 1268 and was not implemented. However, 60 unrestricted short-term licences were issued in 2000, Wheelchair Accessible Taxi (WAT) restricted licences have been issued on request for some time and continue to be so issued* (Ministry of Transport 2004, appendix B)

The Government also instituted other reforms to overcome problems with service standards. These included:

- allowing holders of perpetual hire car licences to surrender them for equity in taxi plates
- introducing fines of $1100 for taxi drivers who use trunk radios—some taxi drivers had used these radios to share jobs involving passengers who had phoned them directly rather than through radio networks
- conducting a trial whereby taxi drivers would not learn the passenger's destination until the passenger had entered the taxi.

The inquiry interim report recommended that the ban on trunk radios and the 'no destination' trial should cease. The Minister for Transport Services subsequently announced that the government accepted these recommendations with immediate effect.

In its 2004 NCP annual report, New South Wales offered to undertake another independent review of the Passenger Transport Act if requested by the Council. This offer arose from New South Wales' contention that the 1999 IPART review had erroneously assumed that there was a quantitative barrier to entry to the taxi sector, whereas new licences are available on demand at market prices, albeit at the discretion of the Ministry of Transport.

Given the government's concerns about the IPART review, the Council indicated in the 2004 NCP assessment that another independent review of this legislation would have merit. It stated that such a review should thoroughly address the extent to which the regulatory arrangements for taxis constitute a restriction on competition and the nature of any remedying reform package.

In April 2005, the Ministry of Transport commissioned another review of the Passenger Transport Act, as the Act relates to taxi services. The review was conducted by Hawkless Consulting, with terms of reference that reflect NCP principles. The government provided a copy of the report to the Council on a confidential basis.

The report makes clear that the Act does not limit the number of taxi licences. However, there is market differentiation between 'perpetual' licences (which are no longer issued) and current licences on offer (ordinary

and short term). Only perpetual licences are traded, and this creates a barrier to entry, because uptake of new licences is deterred by the excessive prices set by the Ministry of Transport for these licences, which the market regards as inferior substitutes. The review lists reform options, and the government is considering the outcome of the review.

Given that review and reform of the legislation is incomplete, the Council assesses that New South Wales has not met its CPA clause 5 obligations in this area.

B2 Tow trucks

Tow Truck Industry Act 1998

The Tow Truck Industry Act requires tow truck operators to be licensed by the Tow Truck Authority. The New South Wales Government commenced a six-month trial of a job allocation scheme for tow trucks on 20 January 2003 and committed to review the Act six months after the scheme began.

The review was completed in March 2004 and considered the competition impacts of the Act. It concluded that tow truck licensing arrangements in New South Wales provide a net public benefit and represent a low barrier to entry. (For tow truck operators in metropolitan areas, application and registration fees total $1060 and drivers' annual fees are $152.) The review also recommended amendments to clause 69(2) of the Tow Truck Industry Regulation 1999, which permits a tow truck operator licensed in another state to tow a damaged vehicle from that state into New South Wales, but does not allow an operator licensed interstate to collect a vehicle in New South Wales and tow it to another state unless the operator also has a New South Wales licence.

Clause 69(2) of the Regulations was amended on 20 April 2005 to provide that an interstate operator/driver who is registered with the Tow Truck Authority under the *Mutual Recognition (NSW) Act 1992* and undertakes work originating in New South Wales is exempt from the licensing requirements.

The Council considers that New South Wales has met its CPA clause 5 obligations in relation to tow truck legislation.

C1 Health professions

Dental Technicians Registration Act 1975

The Dental Technicians Registration Act requires dental technicians to be registered with the Dental Technicians Registration Board to carry out technical work. It also prohibits non-dental technicians from carrying on technical work, except in certain circumstances.

In the 2003 NCP assessment, the Council did not explicitly consider the Dental Technicians Registration Act because it understood that the state had reviewed the regulation of dental technicians in conjunction with the broader review of the Dentists Act. However, New South Wales subsequently advised that a review of dental technician regulation was undertaken as part of the Commonwealth–state review of partially regulated occupations. This review recommended the repeal of the registration provisions. The New South Wales Government considered the review's findings in 1995 and rejected the recommendation on public health and safety grounds.

The Council considers that this Act restricts competition because it appears to preclude non-dental technicians from undertaking such activities. This preclusion may disadvantage providers of technical dental work in New South Wales compared with those in less regulated jurisdictions. Most other jurisdictions either do not regulate the activity of dental technicians or do not prescribe limitations on the performance of technical work.

New South Wales provided the Council with a regulation impact statement (RIS) prepared for the Dental Technicians Registration Regulation 2003. However, the Council does not consider the RIS for the subordinate Regulation to represent a robust public interest case for the restriction in the primary Act. Further, the RIS contains only some limited analysis of the benefits of infection control. In particular, it is not clear why employers of persons engaged in dental work, such as dental laboratories, cannot manage infection control, given that they may be liable for the negligent actions of their employees. The RIS also considers the Regulation's costs only in terms of the incremental impact of amending the regulations to meet the objectives of the Act, rather than considering the costs of the restriction.

The Council accepts that there may be some public interest arguments for regulating dental technicians, in light of the potential health risks. However, without a robust public interest case for retaining the restriction in the enabling legislation, it is not clear that risks to the public are significant.

In its 2005 NCP annual report, New South Wales advised that the Minister for Health expects to bring forward a proposal to repeal the Act in the near future. Nevertheless, the Council assesses that New South Wales has not met its CPA clause 5 obligations in relation to this profession because it has not repealed the legislation or provided a public interest case for rejecting the review's recommendations.

Pharmacy Act 1964

Council of Australian Governments (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 pharmacists (see chapter 19). Compliance with these requirements requires New South Wales to remove these restrictions from the Pharmacy Act.

On 17 February 2004, the New South Wales Government introduced the omnibus National Competition Policy Amendments (Commonwealth Financial Penalties) Bill 2004, which included these reforms to pharmacy regulation as part of a suite of competition policy reforms. These amendments to pharmacy regulation, if passed, would have been consistent with COAG requirements, and the state would have met its review and reform obligations in this area.

The Bill was withdrawn on 4 May 2004. The pharmacy related amendments were then included in the subsequent National Competition Policy Health and Other Amendments (Commonwealth Financial Penalties) Bill 2004—an omnibus health Bill.

On 5 May 2004, the Prime Minister advised New South Wales that it would not attract a competition payment penalty if it amended its legislation to:

- increase from three to five the maximum number of pharmacies that an individual pharmacist may own
- permit friendly societies to own and operate up to six pharmacies (Howard 2004).

These reforms fall short of those required by COAG national review processes. While the number of pharmacies that a pharmacist can own under the Act would increase from three to five, COAG outcomes require that such restrictions be removed. In addition, the proposed amendments would not address disparities between the treatment of friendly society and community pharmacies. They would also increase restrictions on competition, rather than removing them, by limiting friendly societies to owning six pharmacies; previously, no such restriction applied.

Nonetheless, New South Wales subsequently amended its omnibus health Bill to replace COAG compliant provisions with provisions consistent with the Prime Minister's statement. Pursuant to these changes, Parliament passed the National Competition Policy Health and Other Amendments (Commonwealth Financial Penalties) Bill, with assent on 6 June 2004.[4]

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[4] In 2005, the Council became aware that the Pharmacy (General) Regulation 1998 imposes restrictions on the relocation of certain 'grandfathered' pharmacies. On 9 June 2005, it wrote to New South Wales to seek clarification. New South Wales responded on 5 July 2005 to advise the Council that the government amended the

Given that New South Wales has not implemented reforms to pharmacy regulation consistent with COAG requirements, the Council reaffirms its assessment that the state has failed to meet its CPA obligations in relation to pharmacy legislation.

D Legal Services

Legal Profession Act 1987

New South Wales has been progressively implementing reforms arising out of the review of its Legal Profession Act. The state introduced further legislation in 2004 to implement the outcomes of the national model laws (see chapter 19). The *Legal Professions Act 2004* received assent on 21 December 2004.

The state's outstanding legal profession reform obligation—from a competition policy perspective—relates to professional indemnity insurance. New South Wales is considering insurance arrangements in the context of the national processes (see chapter 19).

Given that the professional indemnity insurance matter is still outstanding, the Council assesses that New South Wales has not met its CPA clause 5 obligations in relation to the review and reform of its legal profession legislation.

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

New South Wales progress in implementing reforms was delayed by the need to finalise issues at the national level, including the review of contribution arrangements for the Travel Compensation Fund and the fund's prudential

regulation on 17 June 2005 to provide more flexibility for affected pharmacies to relocate. Those 'grandfathered' pharmacies originally located in Sydney, Newcastle and the Central Coast, or Wollongong can now relocate to other premises within their respective areas. In all other areas, those pharmacies can relocate to any premises with 16 kilometres of their original location.

and reporting requirements, and the review of qualification requirements to ensure uniformity across jurisdictions.

A joint working party considered the Travel Compensation Fund's premium structure and prudential and reporting requirements, and reported to the Ministerial Council on Consumer Affairs that no changes are required. The ministerial council accepted that assessment, and the review of the operation of the Travel Compensation Fund is now complete.

The following occurred in relation to the remaining recommendations of the broader review of the travel agents legislation:

- On 8 April 2005, the Travel Agents Amendment (Qualifications) Regulation 2005 commenced, amending the Travel Agents Regulation 2001 to implement in New South Wales the uniform qualification requirements endorsed by the ministerial council.

- The review recommended increasing the current licence exemption threshold to $50 000. This recommendation was implemented by Ministerial Order made under s5 of the Travel Agents Act, effective 8 April 2005.

The Ministerial Council on Consumer Affairs recommended removing the exemption from the Act for Crown-owned business entities. New South Wales has not implemented this recommendation because it considered that the recommendation was based on an erroneous assumption regarding the principles of competitive neutrality. It argued that the underlying principle of competitive neutrality is to seek to eliminate resource allocation distortions that may arise from government businesses enjoying a net competitive advantage simply as a result of their public sector ownership. It considered, however, that the review erroneously interpreted this principle to require government businesses to face the same regulatory environment as that of their private sector competitors.

New South Wales stated that CPA clause 3(4)(b)(iii) while requiring jurisdictions to impose on government businesses those regulations to which the private sector is normally subject, is an obligation that extends only to those significant government business enterprises which are classified as 'Public Trading Enterprises' and 'Public Financial Enterprises' This interpretation narrowly defines the coverage of this CPA requirement.

New South Wales argued that the ministerial council's recommendation, on the other hand, would result in very broad coverage. Removal of the current exemption for Crown owned business entities, combined with the function based definition of 'travel agent' maintained in the Act, would result in all ministers, government departments, administrative offices, statutory corporations, prescribed public statutory authorities and their employees potentially being required to be licensed as a travel agent. Most of these are not significant government businesses, or necessarily public trading or financial enterprises. In New South Wales' view the recommendation thus

represents an erroneous interpretation of the requirements of competitive neutrality policy.

A central objective of the licensing of travel agents is to provide for contributions to the Travel Compensation Fund which compensates consumers who suffer financial loss as a result of private sector insolvency. New South Wales considered that it would not be appropriate for public sector agencies, which do not share the bankruptcy risk profile of private sector providers, to have to contribute to the fund. The resulting cross-subsidisation from low risk public providers to higher risk private providers would more likely exacerbate any misallocation of resources, rather than work to minimise it, and thus would undermine the principal objective of competitive neutrality policy.

The Council accepts that New South Wales is not obliged to require all government businesses to face the same regulatory environment as that of their private sector competitors. It also accepts that the objectives of competitive neutrality policy may not be served by requiring relatively low risk public sector agencies to contribute to the Travel Compensation Fund. Nevertheless, it notes that other jurisdictions have generally been able to implement the ministerial council recommendation without the adverse consequences identified by New South Wales. This suggests that there may be approaches (for example, rewording the definitions in the Travel Agents Act) that New South Wales could further explore to implement the ministerial council recommendation. However, because New South Wales has assured the Council that, to the extent its public sector agencies compete with private providers of a good or service, they are required to comply with the New South Wales competitive neutrality policy, the matter is of limited significance.

The Council assesses New South Wales as having met its CPA obligations in relation to travel agents regulation.

F1 Workers compensation insurance

Workers Compensation Act 1987

Not assessed (see chapter 9).

G2 Liquor licensing

Liquor Act 1982
Registered Clubs Act 1976

New South Wales completed its review of the Liquor Act and the Registered Clubs Act in October 2003. The review report was released in 2004 following the government's response to a summit on alcohol abuse that was conducted in August 2003. The review identified the following restrictions on competition:

- *The requirement to hold a licence*. The review concluded that the benefits to the community of some form of licensing outweigh the costs, and that any new licensing system should focus more clearly on the harm minimisation, local amenity and probity matters. The review discussion paper noted that the issues to be considered in the social impact assessment of applications for an increase in gaming machine numbers were 'consistent with the local amenity interests that could be considered in a process for granting a liquor licence and imposing conditions on a licence' (New South Wales Department of Racing and Gaming 2002, p. 35).

- *Restrictions on the removal of a licence, once granted, to another location*. The substantial difficulties and costs associated with moving a licence (and the prohibition on removal for some licence types) create 'an obvious barrier to entry' (New South Wales Department of Racing and Gaming 2003, p. 23).

- *The 'needs test' that allows any person who would be affected by a licence application to object on the grounds that existing facilities meet the needs of the public*. The review noted that 'the majority of "needs" objections are made by existing or potential business operators who understandably have a desire to limit competition' (New South Wales Department of Racing and Gaming 2003, p. 23).

- *The highly prescriptive and complex nature of the licence application process*. Applicants can incur significant legal costs and face lengthy application periods during which an opportunity cost may be incurred. The review recommended that the licence application process should be dealt with 'administratively wherever practicable.' (New South Wales Department of Racing and Gaming 2003, p. 49). Under this approach, the Liquor Administration Board would determine licence applications and the Licensing Court would be responsible for hearing appeals against administrative decisions relating to the granting of applications, and disciplinary proceedings against licensees.

- *The high fees charged on grant of a new licence*. New licence fees are based on factors such as the size and location of the business and the fees paid by other licence holders in the area. The review's discussion paper (New

South Wales Department of Racing and Gaming 2002, p. 10) noted that the fee for a new hotel licence in 1998-99 varied from $25 000 (in regional New South Wales) to $175 000 (in Sydney). The fee for a new off-licence ranged from $2500 (in regional New South Wales) to $60 000 (in Sydney). Existing licences changed hands at similar prices. No annual or periodic licence fee or charge is imposed. The review's preferred option is the payment of an application fee, along with an annual administration fee. It considered that these fees should not act as a barrier to entry, with the application fee intended to cover the cost to the government of processing an application, and with the annual fee set at a reasonable level to cover the cost of maintaining and administering the liquor licensing system, and the costs of increased demands on public services.

- *The number of licence categories and the conditions attaching to each category*. The review found instances in which these conditions reduce the ability of licensed premises to respond to changing industry demands. It suggested:

  - reducing the number of licence categories from 21 to seven

  - removing the requirement that a restaurant serve liquor only with meals unless the restaurant holds a dine-or-drink authority. It found this condition unduly restrictive and noted that the high cost of a dine-or-drink authority prevents many restaurateurs from operating in a more flexible way. The condition's removal should be balanced with requirements that restaurants operate primarily as dining venues.

  - deeming some types of venue (convenience stores, milk bars, service stations) unsuitable for selling packaged liquor, but noting a possible ongoing need for such multipurpose venues in certain remote and regional areas of New South Wales (New South Wales Department of Racing and Gaming 2003, p. 46).

- *Restrictions on opening hours*. The review acknowledged that these restrictions are beneficial in promoting harm minimisation and local amenity.

In February 2004, the government introduced amendments that remove the needs test and substitute a social impact assessment (SIA) process with two levels—SIA (A) and SIA (B)—for licence applications. SIA (A) applies where a licence is being moved within 500 metres in a metropolitan area or 5 kilometres within a regional area; where trading hours are not being extended; where licence conditions are not being varied; and where the total area of the proposed premises does not exceed the area of existing premises by more than 10 per cent. SIA (B) applies to all other applications.

The regulations that govern the SIA process for a new hotel licence or off-licence require the applicant to pay a fee of $6600 and to provide extensive information to the Liquor Administration Board, including

- an extensive demographic profile of the local community, including such variables as the number of households in rented accommodation and the number of persons living in the area who work as labourers or in related occupations, and the numbers of persons aged 15 years or over who do not hold tertiary or trade qualifications

- the number of licensed premises and the trading hours for those premises

- social health indicators, including the rates and general trend in alcohol related hospital admissions, the number of emergency accommodation services in the area, the number of drug and alcohol counselling services operating in the area, the number of domestic violence services and refuges operating in the area, and the capacity of these services to meet demand

- the impact on noise, parking and traffic levels, and on the amenity of the local community (including the potential for increased littering, vandalism and public drunkenness).

Copies of SIA applications must be forwarded to various groups prescribed in legislation (for example, the police, community groups representing people of non-English speaking backgrounds etc.). If the proposed premises are adjacent to more than one local area, the study may need to be replicated.

Approval of the SIA by the Liquor Administration Board is expected to take between two and six months, or longer if a party dissatisfied with the board's decision exercises its right of appeal to the Appeals Board and the New South Wales Supreme Court. The SIA is additional to the previous licence application process, and successful completion of the SIA is a prerequisite to lodging a licence application to the Licensing Court.

The Act amendments remove the Liquor Administration Board's power to fix licence fees for the grant of hotel licences and off-licences, which henceforth will be prescribed in the Act's regulations and initially will be set at $2000. They also introduce annual fees for hotel licences and off-licences to be set initially at $2500. Finally, the amendments introduce a prohibition on service stations selling packaged liquor and extend the restriction on granting an off-licence to a convenience store to similar stores such as mixed businesses, corner shops and milk bars.

The Council's 2004 NCP assessment accepted the government's position that there is a strong public interest in disassociating liquor availability from driving and, therefore, prohibiting the licensing of service stations. However, because the government's amendments commenced operation from 1 August 2004, it was difficult to assess their impact on competition in the 2004 NCP assessment. The Council has consistently supported the removal of needs tests for new licences and their replacement with a more broadly based assessment of potential harm, so it welcomed the removal of the most important restriction in the legislation. The Council also noted, however, that the new licence application procedure appeared to be significantly more complex, protracted and costly than that of other jurisdictions and that these

costs are likely to be a significant deterrent to small businesses seeking to enter packaged liquor retailing.

The Council expressed concern that New South Wales had not adopted an administrative approach to granting liquor licences as recommended by its review and as operative in all other jurisdictions. Typically under such an approach, a licensing board determines applications, having regard to potential harm via a consideration of local government and police evidence. The Council also noted that the New South Wales process appears more time consuming, imposes more onerous information requirements and has higher fees and legal costs than its Queensland counterpart, which also requires applicants to provide information concerning the public interest.

In its July 2005 supplementary report on the application of NCP, New South Wales provided additional material on the competition impact of its SIA arrangements. The report noted that approximately 18 SIA applications had been lodged under the new scheme, and given the rush of applications that occurred before the closure of the previous arrangements, that 'this would appear to be broadly consistent with trends over recent years' (Government of New South Wales 2005b, p. 9). The Council notes, however, that no new liquor licences have yet been granted under the new system

New South Wales also provided a comparison of estimated costs for an application for a hotelier's licence under the previous and new systems. Under the previous system, a licence was estimated to cost between $80 000 and approximately $200 550, whereas costs under the new system are estimated to range from $18 600 to $33 600 plus an annual licence fee of $2500. New South Wales considered that the comparison demonstrates not only a considerable reduction in application costs, but also a reduction in the potential range of costs, and that this, combined with the use of an administrative process, significantly reduces uncertainty for investors.

It should be noted that several interested parties have contacted the Council since the introduction of the SIA process, claiming that the arrangements are so onerous as to deter licence applications. Both small and large liquor retailers also claim that the costs of meeting SIA requirements (mainly holding costs on proposed premises and legal costs) are prohibitive. However, these businesses have not provided written evidence to support their claims.

The Government is preparing the draft Liquor Bill 2005 for introduction to Parliament in September 2005. The Bill will incorporate a 'plain English' rewrite of the current Act, the outcomes of the summit on alcohol abuse, the remaining reforms arising from the NCP review, and consequential amendments to around 15 other pieces of legislation. The Bill proposals include:

- extending the SIA process to applications for and removals of the range of other liquor licence categories beyond the current hoteliers and off-licence categories

- for those licences not covered by the 2004 reforms, amending the fee structure to set, in Regulations, fees that reflect the cost to government of processing an application and administering the licensing regime

- providing for all licence applications to be dealt with administratively, with the Licensing Court and Liquor Administration Board being responsible for hearing appeals and disciplinary matters

- reducing the number of licence categories from 21 to seven

- limiting the opportunity for making formal objections to licence applications because local amenity and liquor harm minimisation issues will be adequately addressed through the SIA process.

When assessing the New South Wales reforms, the Council is faced with conflicting considerations. On one hand, the outcome remains a complex and expensive process when compared to those of some other jurisdictions where considerably less onerous licensing procedures are in place without any apparent increase in alcohol related harm. On the other hand, setting potential social harm as the crucial licensing criterion is a marked advance on the previous arrangements which allowed for consideration of the impact of a new licence on the profits of incumbent licence holders. In addition, early evidence suggests the reforms do not appear to deter new licence applications.

On balance, the Council retains its 2004 NCP assessment that New South Wales has met its CPA obligations for in relation to liquor licensing. The passage of the draft Liquor Bill 2005 will not have a material impact on the earlier finding of compliance.

H3 Trade measurement legislation

Trade Measurement Act 1989
Trade Measurement Administration Act 1989

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). New South Wales is pursuing completion of the national response, which will enable it to implement reforms to its Trade Measurement Acts.

The Council thus assesses News South Wales as not having met its CPA clause 5 obligations in this area because it has not completed reforms.

I3 Gambling

Gaming Machines Act 2001

In New South Wales, the *Liquor Act 1982* and the *Registered Clubs Act 1976* originally regulated gaming machine activity. In 2001, the government implemented changes to gaming machine regulation (including a freeze on the number of machines in hotels and clubs) via the Gaming Machines Act, which took over the gaming regulation sections of the Liquor Act and the Registered Clubs Act. The Act caps machine numbers, both in total (104 000) and by venue type (450 for clubs and 30 for hotels), establishes markets for existing licences, limits operating hours for gaming machines, restricts advertising and introduces other harm minimisation measures. The Department of Gaming and Racing completed a review of the Gaming Machines Act in March 2003 and released the review report in June 2003. The review found a net public benefit arising from the harm minimisation measures contained in the Act. It also found that a restriction on the transferability of licences from nonmetropolitan to metropolitan New South Wales is important in maintaining social cohesion in rural areas.

The Council previously assessed the harm minimisation reforms as falling within a range of measures endorsed by the Productivity Commission and COAG, and thus meeting the CPA clause 5 guiding principle (see chapter 9). In its 2003 NCP assessment, however, the Council expressed concern regarding part 11 of the Gaming Machines Act which grants an exclusive investment licence to TAB Limited. While TAB Limited competes with other commercial operators and financial institutions in the supply and finance of gaming machines, it is the only entity that can enter into profit sharing arrangements with hotels as part of the terms of supply. The Council considered that New South Wales did not establish a public benefit case for this exclusivity.

Tabcorp Holdings Limited acquired TAB Limited in July 2004. As a condition of that acquisition, the Act was amended to divest TAB of some of its exclusive licences, including the exclusive investment licence. While a number of hotels had entered into contracts with TAB Limited under the arrangements, all but one of these contracts had expired by the time the Act was amended. The *Gaming Machines Amendment Act 2004* repealed the exclusive investment licence provisions and included a savings provision to allow the one remaining investment licence contract to continue until its expiry date and to prevent any extension of that contract. The amending Act received assent on 15 December 2004.

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

J1 Planning and approval

Environmental Planning and Assessment Act 1979 and planning and land use reform projects

The New South Wales Government advised the Council in December 2002 that it had not listed the Environmental Planning and Assessment Act for review under the CPA, so did not intend to report on this legislation. It stated that it would continue, however, to provide the Council with information on 30 planning and land use reform projects.[5] The Council accepted that the competition restrictions in the Act are being examined in the context of other review processes, and advised the government that it would monitor the progress of the 30 listed projects.

New South Wales reported in April 2004 that 27 of the 30 projects had been completed or almost completed. The three incomplete projects primarily relate to the streamlining of planning approval processes and review of planning standards:

1. Review referral processes and concurrences in local planning policies.

2. Examine planning prohibitions for anticompetitive effects and consider wider adoption of performance standards.

3. Consider potential for standardising consent conditions, zoning classifications and definitions of performance standards.

The government is in the process of implementing major planning reforms that will streamline and improve state, regional and local planning functions. The three projects are addressed by various components of the ongoing reform package, including:

- *The Environment Planning and Assessment (Infrastructure and Other Planning Reform) Act 2005*, was passed by Parliament on 6 June 2005 and received assent on 16 June 2005. The Act provides for a streamlined and integrated development assessment and approval system for major infrastructure and other projects of significance to New South Wales, and facilitates a strategic approach to land use planning with simplified and standardised land use planning controls under environmental planning instruments. The Act also achieves greater standardisation and consistency of local environmental plans (LEPs). Standard instruments will be prepared for environmental instruments under the new Act, initially applying to LEPs. The standard LEP template will standardise definitions, zones and key provisions of local environmental plans, and will revise zoning categories from the current 3100 to around 25, and the 1700 definitions down to fewer than 300.

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5 Box 10.1 of the 2003 NCP assessment (NCC 2003a, p. 10.5) listed the 30 reform projects.

- The Environmental Planning and Assessment (Model Provisions) Amendment Order 2004 and the State Environmental Planning Policy (Repeal of Concurrence and Referral Provisions) 2004 came into effect on 28 February 2005. These instruments remove or amend around 1130 unnecessary and duplicative concurrence and referral requirements from State, regional and local planning instruments, resulting in quicker, simpler assessment processes.

- The New South Wales Government is also taking steps to significantly reduce the number of state, regional and local planning instruments. For example, the number of state environmental planning policies should be reduced from around 59 to fewer than 25. The number of regional environmental plans will be reduced from the current number of 44. Over the next three to five years, the state will progressively move to having one local environmental plan in each local government area. This approach will help to prevent duplication and simplify the planning approval process.

The Council considers that New South Wales has implemented its reforms. and thus assesses New South Wales as having met its CPA clause 5 obligations in this area.

Non-priority legislation

Table 11.1 provides details on non-priority legislation for which the Council considers that New South Wales' review and reform activity does not comply with its CPA clause 5 obligations.

Table 11.1: Noncomplying review and reform of New South Wales' non-priority legislation

Legislation (name)	*Key restrictions*	*Review activity*	*Reform activity*
Consumer Credit (NSW) Act 1995	Regulates the provision of consumer credit.	National review completed. The review recommended maintaining the current provisions of the consumer credit 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.
Motor Vehicle Sports (Public Safety) Act 1985	Makes provision for the control and regulation of meetings for motor vehicle racing.	Review completed.	The government is considering its response and will introduce any legislative amendments in spring 2005..
Private Hospitals and Day Procedures Centres Act 1988	Regulated licensing and conduct.	NCP review is in final stages of completion.	The government will consider its response to the NCP review.
Public Trustee Act 1913	Constitutes a public trustee and prescribes the powers and duties of the public trustee.	Review completed.	The Parliament has twice rejected amending legislation. Alternative means to implement the review recommendations are not considered viable. New South Wales does not intend to present the legislation to Parliament for a third time.

(continued)

Table 11.1 continued

Legislation (name)	*Key restrictions*	*Review activity*	*Reform activity*
Trustee Companies Act 1964	Provides for restrictions, liabilities, privileges and powers of 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.