2 Transport

Transport services are central to Australia's economic performance. In its own right, the transport and storage sector accounted for 5 per cent of Australia's gross domestic product (ABS 2003b, table 47) and employment (ABS 2002b, table 19) in 2000-01. It is a significant input into nearly all other industries.

The National Competition Policy (NCP) covers all modes of transport. This chapter analyses the major elements of the Competition Principles Agreement (CPA) as it applies to the transport sector.

- Clause 5 of the CPA obliges governments to review and, where appropriate, reform legislation that regulates transport (for example, legislated licensing requirements that limit the number of taxis and hire cars).

- Clause 3 of the CPA obliges governments to ensure government-owned rail and port businesses apply competitive neutrality principles.

- Clause 4 of the CPA obliges governments to review the structure of public monopolies (including any prices regulation arrangements) before privatising monopolies or introducing competition to the former monopoly market. This clause is relevant where rail, port and airport businesses are privatised and/or third party access regimes are introduced.

The Council of Australian Governments' (CoAG) reform of the road transport sector — which is aimed at improving the national consistency of regulation in areas such as vehicle registration, vehicle operations, and driver licensing — is discussed in chapter 10, volume 1. (Road transport is one of CoAG's four sector-specific reforms.)

Taxis and hire cars

Chauffeured passenger vehicles, which include taxis, hire cars and minibuses, provide flexible 24-hour, door-to-door transportation services to businesses and individuals. Passengers rely on these services for time-critical and location-specific commuting, particularly where alternative transport modes are infeasible or inconvenient. Taxi services are especially important for the less mobile in the community, including people who are elderly, have a disability or are infirm.

All States and Territories regulate the taxi and hire car industries. It is widely accepted that governments have a role in prescribing safety and quality standards. Accordingly, drivers need to meet minimum standards and

vehicles must be roadworthy. Some governments also subsidise taxi journeys for people with a disability to ensure they have reasonable access to affordable services. Generally, these types of interventions do not have significant impacts on competition.

Conversely, restrictions on the supply of taxi licences, regulated fares and limits on the capacity of hire cars to compete with taxis — such as a prohibition on their ability to respond to street hails — constitute restrictions on competition. Under the CPA, these areas of regulation should be subject to a public interest test. The taxi and hire car industry is almost unique among consumer service industries in having absolute restrictions on entry.

Nature and significance of restrictions[1]

Supply restrictions

State and Territory legislation generally provides for new taxi licences to be issued only on a discretionary basis. This has meant that new licences have been issued infrequently, often leading to a continuing decline in the number of taxis per head of population — a point emphasised in a number of NCP reviews. In Brisbane, for example, taxis per 10 000 population fell from around 20 in 1960 to less than 10 by 1999 (IPART 1999a, p. 75).

Over the post-war period, the rate of household car ownership has steadily increased and mass transit systems have improved, leading some to argue that fewer taxis per head of population is appropriate. There are, however, countervailing influences that have encouraged the use of taxis and hire cars: higher real incomes have given individuals greater capacity to use taxis; congestion and parking problems in major cities have escalated; air travel and tourism have increased substantially; and social trends such as dining out, coupled with increasingly stringent drink driving laws, discourage own driving in some circumstances.

The supply shortfall in Australian capital cities contrasts the supply in New Zealand cities, where taxi markets are deregulated. The number of taxis per 10 000 population in Australian capital cities ranges between around 8 and 11, compared with 29 in Auckland and 37 in Wellington (IPART 1999a, p. 75).

Also indicating the regulation-induced scarcity of taxis in Australia are the artificially high and escalating values attached to taxi licences — often in the range of A$200 000 to A$300 000. The Victorian NCP review found that the real value of a Melbourne taxi licence increased almost fourfold between 1975 and 1998 (KPMG Consulting 1999, p. 55). Subsequent Victorian Government

[1] The Council's 2002 Assessment provided a comprehensive commentary on the nature of taxi and hire car markets including the services provided, network effects and international experiences. This section draws, in part, from that detailed treatment.

estimates indicated further increases, with Melbourne licences achieving values of A$330 000 (Department of Infrastructure 2002).

Fare regulation

All State and Territory governments regulate maximum taxi fares. NCP reviews indicate that fares have risen approximately in line with the consumer price index. Such outcomes are consistent with pricing policies that seek stability and predictability in taxi fares.

In setting maximum fares, the relevant cost-based factors usually include operating costs, administration fees, booking/despatch membership fees, driver income and a return to the taxi owner to cover capital costs. Returns for lessees need to be sufficient to cover the cost of leasing the plate or, in the case of owners, sufficient to yield a return commensurate with the cost of the plate. Thus, there is a direct relationship between plate values and the price of taxi services. Findlay and Round (1995, p. 64) contend that the high cost of plates 'leads owners to press, through the regulatory system, for higher fares in order to provide a higher return on their investment in the plate'. High regulated fares increase taxi revenues, thus further increasing the amount that owners are willing to pay for taxi plates. If the price of plates increases, then the rise could again flow through to higher regulated prices for taxi services.

With the quantity of taxis being controlled, it is difficult for the price regulator to obtain the market information needed to set fares at the level that would reflect a competitive market.

Impacts of restrictions on competition

Impacts on consumers

The cost to the community of restricting licence numbers is considerable, as evidenced by nearly all NCP reviews. The combined restrictions of price regulation and controls on the number of taxis mean that passengers experience either higher prices or lower service quality or both. If prices are regulated down to a competitive level, then the demand for taxi services will be greater than supply and there will be longer waiting times and too few taxis in peak periods. If prices are allowed to rise to reflect fewer taxis and high plate values, then passengers will pay for taxi regulation through higher fares.

Supporters of regulation argue that the current restrictions on the taxi industry improve service quality and productivity. They also argue that fewer taxis avoids rampant price cutting so fares are set at a reasonable level and there is higher use of taxis, which improves their efficiency. Further, the

supporters of the current regulation argue that maintaining a realistic level of profitability in the industry means there is less pressure for cost cutting, so taxi owners and operators are less likely to compromise maintenance and service quality.

In practice, most analysts agree that entry barriers lead to both congestion/availability costs and higher fares. The Victorian NCP review estimated that the average price of a taxi journey was around A$3 higher than it would have been if the market were unrestricted; the review concluded that while the cost of longer waiting times for consumers cannot be estimated, such costs do exist (KPMG Consulting 1999, p. 86).

Both the Western Australian and ACT reviews indicated that the current restriction could be removed without compromising service quality. In Western Australia, customer representatives 'responded most positively to suggestions of increasing the number of taxis as the most effective means of improving customer service' (Market Equity 2003, p. 49).

Restricting the number of taxi licences does increase the use of vehicles but, as noted by KPMG Consulting (1999 pp. 83–4), this reduction in waiting time for drivers must be weighed against an increase in waiting time for passengers. Measures of taxi efficiency need to include an assessment of service quality and not rest on the level of vehicle use.

In late May 2003, the New South Wales Taxi Council applied to the Independent Pricing and Regulatory Tribunal (IPART) for approval of a 20 per cent surcharge on Sunday fares in response to a perception that 'a shortage of drivers is limiting the availability of taxis for unpopular and quiet shifts' (Morris 2003, p. 3). The cost of licences may be contributing to the lack of interest in providing taxi services during periods of low demand.

Overall, the Victorian NCP review estimated that the annual cost to the community (based on then taxi plate values of A$250 000) of taxi supply restrictions was A$72 million, comprising transfers from passengers to plate owners of A$66 million and deadweight losses of A$6 million[2] (KPMG Consulting 1999, p. 93). In a similar vein, the ACT review estimated the annual transfer from passengers to plate owners to be A$5.6 million, and the deadweight loss to be approximately A$408 000 (Freehills Regulatory Group 2000, pp. 149–51). For the Sydney market, the Productivity Commission estimated prevailing lease rates in 1999 led to an annual impost of A$75 million on Sydney taxi users (PC 1999c).

[2] The deadweight loss arises because fewer taxi journeys are taken than would be the case in a market with unregulated supply, because higher prices are charged in the restricted market.

Impacts on industry participants

High plate values have put taxi licence ownership out of the reach of most taxi drivers. The key beneficiaries of the barriers to entry are licence plate owners, many of whom (the majority in some jurisdictions) are investors that have no further involvement in the industry. Many of those who obtained taxi licences in the past and/or previously disposed of plates have appropriated substantial windfall gains from the scarcity value arising from licence restrictions. Others who recently purchased licences at full market value are probably achieving only a market rate of return.

Fares have tended to move with the consumer price index whereas plate values have risen sharply in some jurisdictions, contributing to a squeeze on driver incomes. Most NCP reviews indicated that high values of taxi licences coincide with poor driver remuneration. Many industry participants are concerned that removing the controls on the number of taxis would further reduce driver incomes — a problem that would be exacerbated if fares were deregulated and subsequently fell. This view does not take account for lease costs falling or demand increasing due to the greater availability of taxis and improved service responsiveness.

Lease costs currently range around A$300 to A$400 per week (reaching A$500 per week in the ACT in 1998). The 1999 NCP review conducted by IPART in New South Wales found that the 1998 average cost of a plate lease was around A$18 700 per annum or A$360 per week. This amount was equivalent to around 27 per cent of total operating expenses, including the plate lease cost (IPART 1999b, pp. 60–1). A fall in lease costs can have a significant impact on the cost of operating a taxi business.

Unrestricted entry would also provide more opportunities for drivers to own taxis and be self-employed, rather than working for licence owners. These opportunities, along with the reduction in lease costs and the need for taxi operators in a more competitive environment to attract good drivers, could improve the low driver incomes.

The outcome from this array of sometimes conflicting forces is uncertain. What is clear, however, is that current regulatory arrangements are delivering poor outcomes for drivers and high returns for long standing investors.

Regulatory constraints on taxi alternatives

The hire car sector focused initially on special purposes such as weddings, but over time has broadened its services so it now competes with taxis in some market segments. The key competitive restriction on hire cars is the limit on their numbers. Some jurisdictions, however, have allowed relatively unrestricted entry to the hire car sector, possibly as an indirect means of addressing taxi shortages.

A further restriction on hire cars is the prohibition on rank and hail services (apart from limited opportunities to rank at airports, such as in the ACT and Tasmania). Accordingly, hire cars generally compete with taxis only for pre-booked and phone despatch services. Other restrictions, which vary across jurisdictions, include regulated minimum fares for hire cars (which are set higher than taxi detention rates) and minimum hiring periods (typically one hour). Most jurisdictions also require hire cars to be of higher quality than taxis.

Victoria and the ACT do not regulate hire car fares, and the NCP reviews in these jurisdictions suggested that hire car rates are at a small premium to taxi fares. Hire cars' share of the small chauffeured passenger vehicle fleet is higher in Victoria and the ACT than in jurisdictions that regulate hire car fares. The regulated fare restrictions appear to have a direct impact on the ability of hire cars to compete with taxis, especially in the price-sensitive segments of the market.

NCP review and reform activity

All jurisdictions have completed NCP reviews of the competition restrictions in their taxi and hire car legislation against the CPA clause 5 principles. The Victorian, Western Australian, ACT and Northern Territory reviews recommended removing restrictions on taxi licence numbers and paying compensation to existing plate holders through licence buybacks. The New South Wales and Tasmanian reviews recommended transitional approaches involving annual increases in licence numbers. The Queensland review recommended retaining restrictions on taxi licence numbers. The South Australian review noted that the legislation in that State gives the Government the option of increasing the number of taxi licences by up to 5 per cent per year.

Nevertheless, at the time of the Council's completion of the 2002 NCP assessment report in August 2002, all States and Territories still had licence restrictions that affected competition in the market for chauffeured private vehicles. None of the jurisdictions was considered in the 2002 NCP assessment to have satisfied its CPA clause 5 obligations. No government had demonstrated that the benefits of the remaining restrictions exceeded the costs, nor that the objectives of taxi and hire car legislation could be achieved only by restricting competition.

The slowness (or absence) of reform in several States and Territories may reflect concerns about the impact of rapid change on the financial position of licence holders and about the potential effects for government finances if compensation to plate owners is funded under the Budget.

To encourage State and Territory commitment to reform, the Council wrote to governments on 10 October 2002, stating that while the public interest evidence from governments' NCP reviews supports the immediate removal of supply restrictions, a more gradual transition to open competition could be

consistent with CPA clause 5. The Council outlined the following four broad principles for reform that would be consistent with governments' clause 5 obligations.

1. There should be regular (at least annual) releases of new licences, with sufficient new licences being released to improve the relative supply of taxis in the short term and medium term, given historical demand trends.

2. There should be a commitment to independent and regular monitoring and review of reform outcomes (at least every two to three years), and to additional action if the demand/supply imbalance is not improving.

3. There should be immediate reform of the other chauffeured passenger transport providers (such as hire cars and minibuses) to increase competition.

4. There must be strong commitment that the program of staged licence increases will proceed.

The principles reflect the Council's broad objectives of ensuring reforms deliver real benefits to consumers and enabling governments to follow a staged program of reform through to conclusion.

An 'off balance sheet' compensation model

Some governments indicated that they are considering an approach to taxi reform that involves compensation for licence holders in a manner that does not have an impact on their Budgets. The proposal involves devolving to financial institutions the responsibility for a compensation payout and the subsequent recouping of its cost. The financial institution funds the licence buyout and the government issues new taxi licences for an annual fee, which flows to the financial institution's 'taxi pool'. Over time, the financial institution recoups its initial outlay plus an appropriate return.

Such an arrangement would overcome the fiscal restraint on reform by those governments that consider that licence owners should be compensated for the liberalisation of entry restrictions. The community benefit from such an approach depends on the design features of the proposal.

Price benefits

Setting the annual licence fee below prevailing lease rates for taxi licences would reduce the pressure on regulated maximum fares and possibly induce some price competition in the absence of entry restrictions. Conversely, setting the licence fee above prevailing lease rates would create upward pressure on taxi fares. Irrespective of the magnitude of the licence fees imposed, the full consumer price benefit could not be realised until the financial institution had recouped its investment and the compensation 'surcharge' in licence fees was removed. This would probably take many years

— the higher the licence fee, the shorter the program's duration and vice versa.

Service quality

The deferral of consumer price benefits would be offset by a rapid improvement in the availability of taxis flowing from the removal of entry barriers. This improvement would address the service quality and congestion costs associated with scarcity (particularly during peak periods). In principle, the taxi pool proposal involves deferring price benefits and improving service quality because the compensation of licence owners for the market value of their licence plates would be accompanied by a complete deregulation of entry restrictions. For the taxi fund model to provide a return to the community, governments would need at a minimum to ensure compensation was accompanied by genuine liberalisation of entry restrictions. Retaining residual entry restrictions — possibly premised on a perceived need to bring about an 'orderly' transition — would dissipate the benefits of reform. If the principles or benchmarks underlying such a transition were restrictive, then taxi passengers might not realise any real benefits from the reforms. Moreover, the commercial viability of the taxi fund proposal would be at risk if potential entrants were denied access to a licence.

Problems can also arise if a government directly funds a buyback of licence plates without significantly increasing the number of taxis. The potential price and service benefits will result only if taxi numbers are allowed to increase to redress the taxi shortage and then continue to increase in response to future changes in the demand for taxis. If government regulation restricts such increases, then despite the government incurring significant costs from undertaking the buyback and compensating existing plate holders for the proposed reform, no ongoing benefits would emerge for consumers and plate values would again rise.

The States and Territories made varying degrees of progress in taxi and hire car reforms between the 2002 and 2003 NCP assessments. Some jurisdictions have made significant reforms, reflecting their recognition that reforms would be finally assessed in 2003. Other jurisdictions continued to find it difficult to embrace taxi reforms consistent with the four principles, notwithstanding the benefits that would accrue to consumers.

New South Wales

New South Wales limits the number of taxi and hire car licences through the *Passenger Transport Act 1990*. The NCP review of the Act by IPART was completed in November 1999. The review report 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 1999b, Foreword). 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 review concluded that taxi and hire car restrictions are not in the public interest.

By mid-2002, the Government had only partially responded to these recommendations, releasing 60 six-year taxi licences and 120 wheelchair-accessible taxi licences (a small increase on the almost 6000 taxis in New South Wales). The Government also reduced the annual fee for hire cars from A$16 100 to A$8235 in September 2001. This reduction encouraged a shift from perpetual plate holdings to annual licences because the cost of perpetual plates was becoming prohibitive at A$150 000. New South Wales had the smallest ratio of hire cars to population, indicating scope for further relaxing the limits on, and reducing the cost of, hire car operations. As at mid-2002, the Government was negotiating with the industry on the staged release of taxi licences. Taxi plates were trading at the time at around A$250 000, suggesting that there was a shortage.

A late 2002 survey of taxi users in five States indicated that metropolitan Sydney had the highest proportion (38 per cent) of customers who had been unable to obtain a taxi at some point during the previous six months. The corresponding proportion in Victoria was 30 per cent and, in the other three States surveyed, it was around 20 per cent (Colmar Brunton 2003, pp. 7–8).

The State's 2003 NCP annual report noted that the uptake of new taxi licences over the preceding year had remained slow. It noted industry advice that the downturn in the tourist market had led to a flattening in demand in the taxi market. The New South Wales Government did not implement any reforms involving the regular release of new taxi licences. Perpetual licences are issued on demand at market value, but the high price of plates contributed to no applications being received in recent years. Over the next year, up to 319 new unrestricted taxi licences are expected to be issued as a result of the adjustment package being offered to the holders of perpetual hire car licences (who will be able to surrender these licences for an equity component in a taxi licence).

New South Wales reported in June 2003 that the value of taxi plates was approximately A$290 000. It stated in its 2003 NCP annual report that it may bring forward a review of market conditions and regulation (originally scheduled for 2005). New South Wales subsequently advised the Council that IPART would be asked in June 2003 to model options for taxi and hire car reform.

The Council understands that the only remaining restriction on the issue of annual hire car licences is the willingness of operators to pay the A$8235 annual fee. While New South Wales substantially reduced this fee from A$16 100 — and thus reduced the barriers for new entry — the remaining charge is still a significant deterrent to new businesses.

Assessment

The New South Wales review concluded that the restrictions on competition in the Passenger Transport Act are not in the public interest and thus recommended 5 per cent annual increases in taxi licence numbers between 2000 and 2005. The New South Wales Government did not introduce the reforms as recommended by the NCP review. Next year, however, it expects to increase the number of taxi licences by up to 319 as a result of the hire car adjustment package, although it made no firm commitment to ongoing reform. The IPART is expected to conduct a review of reform options, but the Council has no details of that review. Finally, there has been a significant reduction in the competition restriction in the hire car sector, but the remaining restrictions are still a barrier to entry. While the New South Wales Government stated that it 'remains committed to advancing reform in the taxi sector', the Council concludes that it has not met its CPA clause 5 obligations to review and reform taxi and hire car legislation.

Victoria

Victoria's *Transport Act 1983* and associated Regulations provided for licensing controls on entry into the taxi and hire car industries and for the regulation of driver qualifications, taxi fares, vehicle standards and safety devices. Victoria completed its NCP review of restrictions on taxi licensing in July 1999. The review, by KPMG Consulting, calculated that existing taxi supply restrictions cost consumers A$66.1 million per year and lead to A$6 million per year in deadweight losses to the economy. It recommended removing all restrictions on the number of taxi and hire car licences, and buying back existing licences at full market value (KPMG Consulting 1999, p. 152).

The Victorian Government released its taxi and hire car industry reform package in May 2002. This is the only substantial reform package — involving the release of a significant numbers of new taxi licences — announced by any jurisdiction other than the Northern Territory. The key points of Victoria's reform program are:

- the annual release of 100 new peak period taxi licences, of six year duration, for the next 12 years;
- the annual conversion of 50 peak period licences into full licences, for years 7 to 12 of the reform program;
- the removal of the public interest test and the need for a business case for applications for hire car licences;
- the release of new hire car licences at a fee of A$60 000 (about 10 per cent greater than the market price in 2001), reviewed two-yearly by the Essential Services Commission (to consider whether the licence fee is a barrier to entry);

- a 20 per cent surcharge on taxi fares between 1 am and 6 am (with 100 per cent of the surcharge to be retained by taxi drivers); and
- the introduction of accreditation for licence holders, taxi depots and networks.

The reforms should increase the total number of taxi licences in Victoria by almost 46 per cent over 12 years — from 3273 in 2002 to 4773 in 2014.

The Victorian Government introduced the Transport (Further Miscellaneous Amendments) Bill to Parliament on the same day. This Bill was enacted on 12 June 2002. It delivers some elements of the reform package, including some with implications for the supply of taxis and hire cars — namely, the imposition of a late night tariff on taxi fares (to encourage the provision of services at this peak time), the removal of the public interest test for hire cars and the introduction of an entry fee for new hire car licences (with the amount of the fee to be gazetted, but initially A$60 000). As at mid-2002, Victoria had started implementing the measures announced in May, but not made the first release of additional plates.

In the second half of 2002, the Victorian Government accepted applications for the first release of 25 new peak period licences. It released these licences in January 2003. Over the following six months, applications were invited for two more batches of 25 plates each, and by late July 2003 there were 66 new peak period taxis on the road. The Government is committed to releasing 100 new licences by spring 2003.

Legislative amendments relating to driver probity were introduced to Parliament and passed during May 2003.

Assessment

The Victorian Government implemented measures that are consistent with the four broad principles for staged reform in the taxi and hire car industry. It began a process of annually introducing new licences over 12 years and publicly indicated its commitment to these annual increases. It also committed to review the impact of these increases and to adjust the rate of annual increase if the supply/demand imbalance does not improve. It is making new hire car licences available on demand (although the licence fee is still significant) and brought forward the timing of the Essential Services Commission's independent review of the hire car licence fee. In the June 2002 enactment of the Transport (Further Miscellaneous Amendments) Bill, the Government removed the public interest test requirement for the release of a hire car licence. The Council thus assesses that Victoria has complied with its CPA clause 5 obligations in relation to taxis and hire cars, and that the current phasing arrangements are in the public interest.

Queensland

Queensland's *Transport Operations (Passenger Transport) Act 1994* limits the number of taxi and hire car licences, enabling Queensland Transport to determine the number that it believes are necessary. Queensland released its NCP review of the Act in September 2000. The review report recommended retaining the existing arrangements for issuing taxi and hire licences, arguing that easing supply constraints would increase travel costs (particularly in outlying areas and for services to airports) and reduce the supply of wheelchair-accessible taxis.

The Council considered Queensland's review of taxi legislation in its 2002 NCP assessment:

> *While there is necessarily a degree of uncertainty due to the Queensland review report's lack of clarity, there is considerable doubt as to whether the report's analysis is adequate to justify its recommendations. The assumptions underlying the report's recommendations, and the methodology on which the report has based its conclusions that there are likely to be benefits from retaining supply restrictions, are not clear. It is also difficult to determine from the report precisely what regulatory model is proposed. The review report, therefore, does not provide a strong public interest case for restricting taxi supply, nor does it offer an approach to regulating taxis and hire cars that satisfactorily addresses competition principles.* (NCC 2002, p. 5.30)

The proposed taxi reforms focus on improving the quality of services offered by taxi companies. The report recommended that the hire car licences be made available at a price that reflects the value of licences (Government of Queensland 2000, pp. xviii–xxviii). Such a price would be likely to ensure few new hire car licences would be issued.

By mid-2002, the Queensland Government had not made any substantial announcements since the completion of the NCP review in 2000. The Government had requested a report by Queensland Transport, but the report was expected to address service quality issues rather than supply constraints. Queensland's 2003 NCP annual report stated that the department's report would focus on 'measures to enable booking companies more flexibility and responsibility in controlling the resources they need to provide taxi services', and indicated that the department would recommend policy proposals to the Government in April 2003. This focus indicated that the Government accepts the general recommendation to retain supply restrictions.

Queensland informed the Council in early July 2003 that Queensland Transport is developing a submission outlining options for taxis and limousines, including options based on the four broad principles for reform.

Assessment

Queensland's 2000 NCP review did not demonstrate a public interest case for retaining the restrictions on taxi and hire car licence numbers, but the Government did not introduce any significant taxi and hire car reforms after the review. Its approach to taxi reform, therefore, is not consistent with the four broad principles of reform that the Council circulated to States and Territories in October 2002. The Council concludes that Queensland has not complied with its CPA clause 5 obligations in relation to taxi and hire car legislation.

Western Australia

Western Australia's *Taxi Act 1994* allows the Director-General of Transport to prescribe the number of taxi licences that will be issued per head of population in different 'control areas', set fare schedules, establish driver qualifications and vehicle standards, and impose conditions on the transfer of taxi plates. Western Australia does not restrict the number of hire car licences, and hire car licence fees are nominal. As at mid-2002, however, several restrictions impeded the capacity of hire cars to compete with taxis. Not only were hire cars required to accept only jobs that had been booked by phone, but the bookings had to be for at least an hour and the hire cars had to charge a detention fee that was 30 per cent higher than that charged by taxis (a difference that increased to more than 64 per cent in September 2002).

The NCP review of the Western Australian taxi industry was completed in August 1999. It recommended removing restrictions on taxi licence numbers, retaining maximum fares for a transitional period following which they should be reviewed, and retaining safety and vehicle standards. Western Australia established a steering committee of officials to respond to the NCP review. The committee recommended more gradual reform, involving the issue of 100 new peak period licences and 50 new wheelchair-accessible taxi licences. The Government put 25 wheelchair-accessible taxi licences and 100 peak period licences to tender in early 2000. The peak period licences were only for Friday and Saturday nights and for vehicles that could carry six passengers or more. These restrictions discouraged the uptake of the licences, with only 35 being issued following the tender.

As at mid-2002, the Western Australian Government had not conducted any further tenders or other taxi licence issues. Data collected by the Department of Planning and Infrastructure from taxi companies suggest that the lack of new licence issues exacerbated the shortage of taxis. In the second quarter of 2002, the proportion of 'as soon as possible' bookings that were not covered in the peak period of the day was 5.3 per cent, up from 4.6 per cent a year earlier. The proportion of taxis not arriving to pick up wheelchair passengers who had made phone bookings was similar. There was a significant proportion of jobs with long waiting periods, especially in peak times and especially for wheelchair customers. A market value of more than A$200 000 for an existing taxi plate also indicated an ongoing shortage of taxis in mid-

2002. Over the following year, there was no major release of new licences and service performance remained much the same.

On 26 February 2003, the Western Australian Government convened a forum with industry and consumer representatives to discuss the implications of the NCP and the four principles for gradual, staged reform. Following this forum, the Government established a review group comprised of a Parliamentary Secretary and representatives of the Department of Planning and Infrastructure and the Department of Treasury and Finance.

The Government announced reforms on 9 July 2003 that involve leasing 50 new nontransferable taxi plates in Perth (around 4 per cent of the taxi population) during 2003 and consideration of buying back existing taxi plates from those plate owners who wish to sell them, with the redeemed plates being made available for lease as nontransferable plates. The Government proposed that the lease rates will be A$235–285 per week, which compares with the market lease rate of A$345 per week. The buyback proposal would involve:

- the purchase of plates at market price[3] or the price that the owner paid for them, whichever is higher; and
- establishment of a fund by a financial institution to cover the cost of the voluntary buyback. The fund would be repaid over time from the cashflow generated by the issue of new licences. The payback period is estimated at 17–21 years (Giffard 2003, pp. 39–40).

The buyback offer would end after three years.

A 12 August 2003 statement to Parliament by the Minister for Planning and Infrastructure indicates that the Government will not proceed with a buyback unless industry representations force a reconsideration.

The Government intends to release a smaller number of new plates in following years, 'depending on consumer demand'. It believes that the increased taxi numbers will improve consumer service and 'give more drivers a chance to acquire their own plates' (MacTiernan 2003). In announcing the Government's proposed taxi reforms, the Minister for Planning and Infrastructure stated that Western Australia's taxi legislation will require substantial amendment to implement the reforms. The Taxi Amendment Bill 2003 was introduced on 19 August, providing for the Government to issue licences through leases in addition to the current arrangements of selling licences by tender.

The Western Australian Government has not announced any reforms to the hire car sector. While there are no restrictions on hire car numbers, the minimum booking time and price regulation do restrict competition.

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[3] The review report that accompanied the Government's statement indicated that the market price will be the average price paid for plates in 2002.

Assessment

Western Australia intends to release some new plates in 2003 and has committed to further increases in later years. These further releases will be based on the monitoring of performance indicators (as currently occurs). The Council suggests that Western Australia consider further reform to hire car regulation too.

The Council considers that Western Australia has made some progress towards taxi reform. The Council assesses that Western Australia has not completed its review and reform activity in relation to taxis and hire cars.

South Australia

South Australia's *Passenger Transport Act 1994* allows the Government to restrict the number of taxi licences on issue; it can issue up to 50 new licences per year. The Act also allows the Government to set maximum taxi fares. South Australia has allowed unlimited entry of hire cars since 1991, subject to the payment of fees for operator accreditation (around A$250) and the vehicle (around A$1110). Hire cars account for a significant proportion of prebooked services in Adelaide.

Halliday–Burgan conducted an NCP review of the Act in 1999. The review concluded that there is no need to change the Act because the Government has the discretion to increase the number of taxi licences. Between the 1999 review and mid-2002, however, the South Australian Government had not used this discretion. The Council's 2002 NCP assessment stated that 'the mere existence of the legislative discretion is not sufficient for compliance with CPA clause 5 obligations'. Factors that indicate a shortage of taxis in Adelaide include the results of a survey of passengers conducted by the Consumers Association of South Australia in early 2003. Almost half of the respondents gave a low rating to the punctuality of Adelaide taxis. A large proportion of respondents were concerned about drivers' reluctance to accept short trips and to provide noncore service such as assisting people who are elderly or have a disability to enter or alight from taxis.

The South Australian Government promised in the 2002 election that there would be no new taxi licences in its first term of office. In information provided to the Council in mid-June 2003, the Government indicated that it is still considering its response to the NCP review. This information showed that the number of general taxi licences in Adelaide has remained unchanged at 920 since 2001. The number of wheelchair-accessible taxi licences had increased from 68 in 2001 to 73 in 2003. The average value of taxi plates sold in the first half of 2003 was A$140 000.

Assessment

South Australia's hire car arrangements have been consistent with the Council's third broad principle (relating to other chauffeured passenger transport) for some years. The Government has not announced, however, that it will change its arrangements that provide for the ad hoc release of new taxi plates by the Minister. Further, plate numbers have stagnated. Despite the contribution of hire car deregulation, the value of taxi plates and the response of passengers to the survey on service quality indicate that significant restrictions on competition remain. South Australia has not met its CPA clause 5 obligations in relation to taxis.

Tasmania

Tasmania did not introduce any reforms between the end of its NCP review in April 2000 and the Council's NCP assessment in mid-2002. As at that time, the *Taxi and Luxury Hire Car Industries Act 1995* allowed the Tasmanian Transport Commission to issue new taxi licences whenever the value of a licence exceeded a 'capped value' set by regulation. A concern with this arrangement is that it is difficult to estimate which plate values indicate that supply shortfalls are becoming significant.

The 2000 NCP review noted that no new licences had been issued since 1995. It recommended the annual issue of new licences (at a level of 5 per cent of existing licences) via a tender. While licence issues under such a tender would have been subject to reserve prices, they would have been more responsive to tightening supply conditions. By mid-2002, the Tasmanian Government had not changed the restrictive arrangements for the issue of new taxi licences.

Tasmania removed some restrictions on the entry of hire cars in 2000, especially the requirement that they charge a minimum fare of A$40. It allowed unlimited entry of new hire cars, subject to a A$5000 one-off fee.

In correspondence with the Council in August 2002, Tasmania acknowledged that it was yet to consider the recommendations of the regulatory impact statement following the 2000 NCP review. Tasmania asked the Council whether implementation of the NCP review recommendations — particularly the proposal for an annual tender of a 5 per cent increment in the number of licences — would meet the State's NCP obligations. The Council replied in October 2002 that action in line with the review recommendations would meet the CPA obligations, provided Tasmania committed to a further review of the effects of the reform two years after its implementation. Tasmania advised in August 2003 that the Government is expected to consider its response to the 2000 NCP review in September 2003.

Assessment

Tasmania's review identified taxi market reforms that are consistent with the broad principles outlined by the Council in October 2002. If the Government committed to annual increase taxi numbers and to review the market situation in two years, then the reforms would be consistent with its CPA clause 5 commitments. For the moment, however, the Council assesses the Tasmanian taxi reforms as incomplete.

The ACT

The ACT's *Motor Traffic Act 1936* provides for the issuing of taxi licences, enabling the Minister to determine the maximum number of taxi and hire car licences and to set maximum taxi fares. The ACT conducted two reviews of the taxi and hire car industry. The first review report was prepared by the Freehills Regulatory Group and completed in March 2000, recommending that taxi and hire car supply restrictions be removed. The second review was undertaken by the Independent Competition and Regulatory Commission (ICRC) and released on 12 June 2002, also recommending that restrictions on entry to the ACT taxi and hire car industries be removed. The completion of this report in June 2002 gave the ACT Government insufficient time to announce reforms before the Council completed its 2002 NCP assessment.

The ICRC review found that no new taxi licences had been issued since 1995, although 20 wheelchair accessible taxis were issued in the April 2000–June 2001 period, and 16 Queanbeyan taxis have been able to operate freely in the ACT since July 2001. This slow growth in supply was likely to have contributed to the high value of taxi plates in the ACT, which had been in the range of A$250 000 to A$270 000 over the previous 12 months. By mid-2002, the ACT had not issued any new hire car plates for 20 years.

The introduction of the Public Passenger Service legislation in 2001 removed the reserve price for a taxi licence and the limit on the number of licences that may be held by one person. The legislation also introduced operator and taxi network accreditation to set minimum service standards, increase safety and accountability of taxi services.

On 10 December 2002, the ACT Minister for Urban Services announced reforms for the taxi and hire car industry. An additional 5 per cent of taxi licences will be issued each year, subject to a reserve price that will be based on the ACT Valuer-General's valuation of market prices in November 2001. The reserve price will be set at 90 per cent of the market value. If the average price at auction is more than 95 per cent of the market value, then a further 5 per cent of licences will be released. In the following years, market value will be the average sale price from the previous year's auction. The maximum number of licences released in any year will be 10 per cent of the current fleet. New hire car licences will be released according to a similar formula, but at a rate of 10 per cent for the first two years. The ICRC will review the reforms after two years and, thereafter, every three years.

Legislation was introduced to the ACT Legislative Assembly in April 2003 to establish the regulatory power to allow the annual increases in licence numbers through auction arrangements. The Road Transport (Public Passenger Services) Amendment Bill 2003 would remove existing legislative provisions that empower the Minister to determine the maximum numbers of taxi and hire car licences. Draft regulations were circulated to industry representatives in May and June 2003. The ACT Legislative Assembly debated the Bill in mid-June 2003 and directed it for consideration by an Assembly Standing Committee.

The Valuer-General determined a valuation for taxi and hire car licences and the Government scheduled the first auction of licences for August 2003. This auction has been deferred by the Assembly's referral of the legislation to a standing committee, which has been given until December 2003 to make its report.

Assessment

The ACT's intended taxi and hire car changes are broadly consistent with the principles for reform that the Council circulated to jurisdictions in October 2002. The Council is concerned, however, that the numbers of new taxi and hire car licences that will be issued at the first auction may be less than the 5 per cent and 10 per cent respectively provided for in the reforms. The reserve price has been set at 90 per cent of the value of the plates before the proposed reforms were announced. Given that the industry is aware that reform is proceeding, the market value of taxi plates is likely to have already fallen. The reserve price may be close to or even above the current market value. If there is limited take-up at auction due to the level of the reserve price, then the Council believes that the ACT should reconsider the design of the auction conditions to attract new participants to enter the industry. The ACT did not complete its taxi and hire reforms and it is not clear whether (and in what form) the amending legislation will be passed and when the proposed auctions will result in increased taxi and hire car numbers. The Council thus assesses the review and reform activity in this area as incomplete. In future NCP assessments, the Council may revise its assessment of the adequacy of the reform program if an increase in taxi and hire car numbers does not result.

The Northern Territory

In its 2001 NCP assessment, the Council assessed that the Northern Territory — which removed its restrictions on taxi and hire car numbers in January 1999 and introduced a buyback program — had complied with its NCP obligations. In November 2001, the Northern Territory imposed a temporary (six-month) cap on the numbers of taxi, hire car and minibus licences. The Government released a discussion paper in May 2002, proposing the establishment of a board (with industry membership) that would advise the Government on certain regulatory issues, including the size and composition of the industry.

The temporary cap was still in place in mid-2002 and the Council concluded in its 2002 NCP assessment that the Territory would no longer comply with its CPA clause 5 commitments if it introduced new restrictions on competition without an adequate public interest justification. The Council indicated that it would reassess the Territory's performance in 2003, by which time the end of the cap and the role of the board were expected to be clarified.

The Minister for Transport and Infrastructure announced on 16 October 2002 that the temporary cap on licence issues would be extended to the end of December 2002, after which there would be no number controls on taxi, minibus and hire car licences. (The temporary cap was subsequently extended to the end of February 2003.) The Minister announced that minibuses would be allowed to operate like taxis, responding to street hails. The private hire car category would be phased out by July 2003 and replaced by 'executive taxis' (higher standard vehicles that can ply for trade like a taxi but charge higher fares) and 'limousines' (higher standard vehicles for pre-booked travel only). The Minister also announced that a Commercial Passenger Vehicle Board, with industry and consumer representation, would be established to advise the Minister.

The first stage of the reforms was implemented when the Commercial Passenger (Road) Transport Amendment Act came into effect on 1 March 2003. This Act established the Commercial Passenger Vehicle Board, set standards for driver training and introduced the executive taxi category. The Government introduced the second stage of reforms in the Commercial Passenger (Road) Transport (Consequential Amendments) Bill, which the Minister presented to Parliament on 25 February 2003. This legislation established the limousine category and allowed taxis and minibuses to stand at bus stops outside bus service hours.

On 3 June 2003, the Minister announced further changes to taxi and hire car arrangements, which he said the Government would introduce to Parliament in the June sittings. He said that the changes are 'designed to accommodate industry concerns articulated in the final round of public consultation on the issues' (Vatskalis 2003). The Minister announced that the number of taxi licences would be capped in the Darwin and Alice Springs regions — where the number would fit within a ratio of one licence for every 900 people (implying small falls from current taxi numbers in those regions) — and that cap would be reviewed after 12 months.

Despite the recent increase in the availability of taxis, the cap results in a significant restriction on taxi numbers. In 1999, IPART (1999a, p. 75) provided data on taxis per person in some Australian and New Zealand cities. At that time, both Sydney and Hobart had fewer people per taxi (approximately 880 and 890 respectively) than the current level regulated in the Northern Territory. Taxi availability in Auckland and Wellington was considerably higher, where one taxi served 340 and 290 people respectively. Given that the Northern Territory taxis also serve a significant number of tourists, who are not included in the population estimates, this restriction on taxi numbers is significant.

The Minister also announced that the private hire category would be reintroduced (with licences costing A$6000 per year) and that executive taxis would not be introduced (Vatskalis 2003). Private hire cars and limousines would be able to use mobile phones to communicate with their clients and their bases. (Earlier in 2003, the Minister had foreshadowed possible restrictions on such mobile phone use.) The changes announced by the Minister were implemented by amendment to the Commercial Passenger (Road) Transport Amendment Act and the Commercial Passenger (Road) Transport (Consequential Amendments) Bill.

Assessment

By restoring unlimited entry to the taxi and other chauffeured passenger transport markets in March 2003, the Northern Territory removed a key restriction on competition. As part of this process, the Government compensated existing licence holders for the fall in licence value as a result of the reforms. The Council is concerned, however, about the reintroduction of caps on taxi numbers in the Darwin and Alice Springs regions. While the Government undertook to review the cap in 12 months, the restriction represents a significant constraint on competition. The annual cost of hire car licences also represents a significant restriction on competition. The Council assesses that the Northern Territory has not complied with its CPA clause 5 obligations for taxi and hire cars.

Table 2.1: Review and reform of legislation regulating the taxi industry

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Passenger Transport Act 1990*	Limitation on numbers of taxis and hire car licences	Review was completed in November 1999. It recommended: • an annual increase (5 per cent) in licences (limited term, non-transferable) during 2000–05; • no restrictions on hire car licences to increase competition; • further review in 2003; and • continuing fare regulation.	The Government supported but did not implement the recommended 5 per cent annual increase in licences. It released 60 restricted taxi licences and 120 wheelchair-accessible taxi licences in 2000. The take-up of the new licences was low. There has been a partial deregulation of hire cars via a substantial reduction in the annual hire car licence fee and relaxation of vehicle standards. There is no firm commitment to ongoing reform.	Does not meet CPA obligations (June 2003)
Victoria	*Transport Act 1983*	Limitation on numbers of taxis and hire car licences	Review was released in October 2000. It recommended: • the removal of entry restrictions for taxis and hire cars; • the buyback of existing licences, to be funded by annual fees on operators; • continuing fare regulation, pending the development of a competitive market; and • improvement in the quality of fare regulation via the transfer of responsibility to an independent economic regulator.	The Government announced reforms in May 2002, including the annual issue of 100 new peak period licences for 12 years, additional licences in years seven to 12 via the conversion of peak licences to full licences, and a reduction in restrictions on hire car numbers, subject to an entry fee of A$60 000.	Meets CPA obligations (June 2003)

(*continued*)

Table 2.1 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Queensland	*Transport Operations (Passenger Transport) Act 1994*	Limitation on numbers of taxis and hire car licences	Report was publicly released in September 2000. It recommended: • revamping of regulatory structure around performance agreements with booking companies; and • allowing booking companies a measure of control over licence numbers.	Queensland Transport is developing policy options that the Government expects to consider in the second half of 2003. Queensland has not introduced any significant reforms or made a commitment to future reform.	Does not meet CPA obligations (June 2003)
Western Australia	*Taxi Act 1994*	Limitation on numbers of taxi licences	Review was completed in August 1999. It recommended: • the removal of licence supply restrictions; • the use of substantial training requirements to regulate entry; • similar requirements for the hire car industry; • the payment of full compensation to existing plate owners; and • the issue of new licences at a maximum rate of 20 per cent per year on a 'first come, first served' basis.	Peak period licences were tendered in 2000, but the take-up was low due to restrictive conditions. A February 2003 taxi forum was followed by a review, with its findings released in July 2003 together with the Government's decision to lease 50 new taxi plates in 2003 and smaller numbers in following years. Legislative amendment to allow leases introduced in August 2003.	Review and reform incomplete

(*continued*)

Table 2.1 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
South Australia	*Passenger Transport Act 1994*	Limitation on numbers of taxi licences (no restrictions on hire car numbers)	Report was completed in November 1999. It recommended: • retaining existing restrictions (for example, the Act limits the number of new general taxi licences that the Passenger Transport Board can issue in a particular year to 50, although none has been issued); and • relying on competition from hire cars, once some restrictions are removed.	The Government did not respond to the 1999 review.	Does not meet CPA obligations (June 2003)
Tasmania	*Taxi and Luxury Hire Car Industries Act 1995*	Limitation on numbers of taxis and hire car licences	Report was completed in April 2000. It recommended: • an annual tender of new licences up to 5 per cent, subject to the reserve price, or 10 per cent if the tender price exceeds valuations by 10 per cent; • the retention of maximum fare for rank/hail market only; and • free entry to the hire car industry subject to A$5000 licence fee.	The Government is expected to consider its response to the review in September 2003. Tasmania has implemented hire car reforms.	Review and reform incomplete

(*continued*)

Table 2.1 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
ACT	*Motor Traffic Act 1936* *Road Transport (General) Act 1999* *Road Transport (Passenger Services) Act 2001*	Limitation on numbers of taxis and hire car licences	The NCP review was completed in March 2000. On licence quotas, it recommended: • the immediate removal of restrictions on the supply of taxi and hire car licences; • full compensation to licence holders via a licence buyback, with compensation to be funded via consolidated revenue or a long-term licence fee regime. The ICRC released its report in June 2002. It endorsed the removal of supply restrictions and proposed three options for compensation (not recommending any particular option).	In December 2002, the Government announced that an additional 5 per cent of taxi licences would be issued each year, subject to a reserve price (90 per cent of market value). New hire car licences are to be released according to a similar formula, at a rate of 10 per cent for the first two years. The first auction was scheduled for August 2003, but has been delayed).	Review and reform incomplete
Northern Territory	*Commercial Passenger (Road) Transport Act*	Limitation on numbers of taxis and hire car licences	Review was completed in 1998. It recommended: • the elimination of restrictions on licence numbers; • compensation for the full market value of licences via a licence buy-back; and • substantial licence fees to recoup compensation costs.	The Government removed supply restrictions and implemented a buyback in January 1999. It imposed a six-month moratorium on new licences in November 2001 (which was later extended). The reforms announced in October 2002 did not restrict taxi and hire car numbers. In June 2003, however, the Minister announced a cap on the number of taxis in Darwin and Alice Springs at one per 900 people. These reforms were passed on 17 June 2003.	Does not meet CPA obligations (June 2003)

Road transport-related legislation

Tow truck legislation

Legislative restrictions on competition

Most jurisdictions have legislation governing the operations of tow truck owners.[4] Competition restrictions in tow truck legislation mostly cover safe and proper towing activities, procedures for towing and licensing. Some legislation provides for the central allocation of towing jobs and price-setting for some towing activities. Governments vary in the degree to which they regulate conduct.

Some legislation uses the licensing system to ration the number of operators to match the perceived need. Restrictions based on perceived need for services give incumbent providers a competitive advantage over potential entrants, thus raising costs by decreasing competition, reducing the need for efficient delivery of services and placing artificially high values on licences. Further costs arise if the regulator does not accurately predict need. The main benefit of the regulation is greater certainty.

An issue that has been raised with the Council on several occasions is the impact of regulation on businesses that operate in more than one state. Some regulatory arrangements involve prohibitions (including the failure to recognise licences from another jurisdiction); others have the unintended effect of constraining the operation of interstate businesses.

Regulating in the public interest

Many restrictions on tow truck operators have arisen in response to concerns about probity, consumer protection and safety. While licensing and enforcement provide community benefits from the assurance of probity and consumer protection, they also impose costs. Entry requirements that are too onerous or conduct rules that are too restrictive can reduce competition and significantly raise the price of towing services. There are also compliance and enforcement costs for operators and governments respectively.

[4] The CoAG road transport reforms affect tow truck operators, but do not specifically cover the tow truck industry.

Review and reform activity

In its 2002 NCP assessment, the Council found that Queensland and the Northern Territory had both met their CPA clause 5 obligations. Western Australia, Tasmania and the ACT did not list for NCP review any legislation restricting tow truck operations. The Council considers that these five governments met their CPA clause 5 obligations. For this 2003 assessment, the Council assessed outstanding issues in New South Wales, Victoria and South Australia. Table 2.2 details the progress of governments' review and reform activity relating to the tow truck industry.

New South Wales

New South Wales reviewed and reformed its tow truck legislation in 1998. The reformed *Tow Truck Industry Act 1998* and supporting Regulations provide for the establishment of a job allocation scheme. The reformed legislation also introduced a (possibly unintended) restriction on competition. Clause 69(2) of the Tow Truck Industry Regulation 1999 permits a tow truck operator licensed in another State to tow a 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. Allowing tows one way and not the other on the basis of licensing, restricts competition.

The New South Wales Government commenced a six-month trial of the job allocation scheme on 20 January 2003 and committed to review the Tow Truck Industry Act six months after the job allocation scheme begins. Its 2003 NCP annual report stated that the terms of reference will include an examination of the impact of clause 69(2) of the tow truck Regulations on interstate operators. New South Wales has not completed its review and reform activity.

Victoria

Victoria completed the review of its tow truck legislation in 1999. The legislation restricts market entry and conduct by limiting the number of licences available and defining licence categories and conditions. In particular, new accident towing licences (including heavy vehicle accident towing licences) can be issued only with Ministerial approval and then only after the licensing authority has assessed the need for the new licence. A need criterion is applied for the authorisation of a certain number of licences for each region. The legislation also manages charges, implements a central job allocation system within the Melbourne metropolitan area and places obligations on repairers. The review recommended that the Government:

- clarify the objectives of the legislation;

- replace the job allocation scheme with a mechanism to allow for bidding for franchised towing areas, or alternatively, modify the job allocation scheme;

- remove the need criterion from the accident towing licence approval process;

- remove the need criterion for location decisions;

- clarify the zone boundaries and review the Melbourne metropolitan boundaries;

- continue the regulation of accident towing fees (although this will not be necessary if the Government adopts the franchise bidding scheme), but allow greater transparency and independence in their establishment; and

- extend the cooling-off period for repairs.

The Victorian Government rejected several of the key recommendations. It did not accept that the need restrictions on accident and heavy accident licences should be removed, arguing that an oversupply of tow trucks would lead to 'law of the jungle' conditions at accidents, which would stress accident victims and have an adverse impact on the State's accident attendance allocation system. The Government also did not accept that the need criterion should be removed for location restrictions, arguing that such a change could result in certain regions not having adequate truck numbers to attend accidents. The Government accepted recommendations relating to accrediting tow truck licence holders, exempting motor cycle carriers from basic licence requirements, ensuring consumers have access to information pamphlets and insurance company advice at towing destinations, making the Essential Services Commission responsible for the regulation of fees, and extending the cooling-off period. The necessary legislative changes were made in 2002 and autumn 2003.

Victoria's approach to tow truck licences has meant that licences have acquired a value as a result of their scarcity. In this regard, tow truck licensing is similar to taxi licensing, although the licence values are somewhat lower for tow trucks. In 1999, Victoria's 378 metropolitan accident towing licences were worth around A$22.7 million (approximately A$60 000 per licence). The review report estimated that about half the accident towing fee could be attributed to servicing the capital cost of the licence.

The Council is concerned that the restrictions increase accident towing fees by adding to the capital cost of tow truck licences. This cost may outweigh any service quality benefits that consumers gain from the restrictions. Further, Victoria did not demonstrate that the need and location restrictions are the only means of achieving orderly conduct at accident scenes and ensuring adequate tow truck availability in all regions. The Council asked Victoria for the public interest evidence for the entry restrictions. The Government asserted that the current arrangements work well and that job allocation arrangements (as practised in other jurisdictions) would be unworkable as a

result of 'the sheer number of operators'. The Council considers that Victoria did not fully consider alternative mechanisms of dealing with public interest concerns in the tow truck industry. Further, Victoria did not show that job allocation arrangements would not effectively moderate tow truck operators' behaviour. Victoria has not met its CPA clause 5 obligations in relation to tow trucks.

South Australia

South Australia completed the review of the accident towing provisions in the *Motor Vehicle Act 1959* in 2001. It informed the Council that it intended to release the report for consultation with industry and key stakeholder groups in mid-2003, and complete a draft Bill by August 2003. South Australia did not, however, commence this post-review consultation process or provide the Council with a copy of the review report.

The Council cannot gauge (1) the extent of reform proposed by the South Australian review of tow trucks, or (2) the public interest justification for any remaining restrictions on competition. South Australia has not completed the review and reform of tow truck legislation.

Table 2.2: Review and reform of legislation regulating tow trucks

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Tow Truck Industry Act 1998*	Licensing, job allocation scheme, pricing controls	This legislation was introduced in 1998 following a review of the industry. A review is to begin six months after the job allocation scheme was established (20 January 2003).	Six-month trial of job allocation scheme is being undertaken.	Review and reform incomplete
Victoria	*Transport Act 1983* (provisions relating to tow trucks) and Transport (Tow Truck) Regulations 1994	Market conduct, licensing, fee setting	Review was completed in 1999. It recommended: the removal of entry restrictions for the heavy vehicle towing market; the development of an industry code of practice; a more proactive role for insurers in educating their customers; the retention of the allocation scheme; and the introduction of a franchise scheme for the Melbourne metropolitan area.	The Government rejected several recommendations, arguing that need restrictions on licences and location are necessary to prevent distress to accident victims, facilitate the allocation system and ensure regions are adequately serviced.	Does not meet CPA obligations (June 2003)
Queensland	*Tow Truck Act 1973* and Tow Truck Regulation 1988		Review was completed in 1999, finding a public benefit justification for the consumer protection and industry regulation provisions in the Act.	Act was amended in 1999 to strengthen the consumer protection provisions.	Meets CPA obligations (June 2002)
South Australia	*Motor Vehicles Act 1959*	Market conduct	Review was completed in 2001.	The Government is proposing to consult publicly and introduce legislation in the second half of 2003.	Review and reform incomplete
Northern Territory	*Consumer Affairs and Fair Trading Act* (part 13)	Code of practice	Review was completed in October 2000. It recommended retaining the code of practice and formalising the right for all consumers to be offered a supplier of their choice.	The Government approved the review recommendations in November 2000.	Meets CPA obligations (June 2001)

Dangerous goods legislation

Dangerous goods legislation covers a wide range of activities and goods. The laws usually relate to the manufacture, transport, storage and use of explosives, fireworks, chemicals and other high risk substances, including flammable, carcinogenic and radioactive materials. The principal objectives of legislation are to maintain health and safety, and to protect the environment.

Regulation of the transport of dangerous goods by road

Regulation of the transport of dangerous goods by road was reformed as part of the national road transport reform program that CoAG endorsed for the 1999 NCP assessment (NCC 1999b). All governments now have legislation, regulations and a code of conduct that are consistent with the national provision for the carriage of dangerous goods by road, so all comply with this aspect of the national road transport reforms and clause 5 of the CPA.

Other regulation of dangerous goods

In addition to regulations governing the road transport of dangerous goods, several other provisions governing dangerous goods restrict competition. These cover primarily the licensing of businesses and equipment operators such as shotfirers and gasfitters. The licences can be prescriptive, stipulating requirements for the manufacture, transport and handling of the goods. They can be inflexible, technical requirements that are inconsistent between jurisdictions. Some legislation stipulates conditions for displaying items such as fireworks. Inconsistencies hamper competition because more than one standard applies if an activity crosses State boundaries.

More than 10 years ago, CoAG initiated moves to harmonise the regulation of safe handling of dangerous goods. As part of this process, the National Occupational Health and Safety Commission formally declared the National Standard for the Storage and Handling of Workplace Dangerous Goods and an accompanying national code of practice in 2000. The Commonwealth Government's economic impact assessment of the national standard found that the benefits may marginally outweigh the costs over 10 years. The assessment also identified qualitative benefits, including:

- *nationally consistent approach to the management of hazards arising from the storage and handling of dangerous goods;*
- *improved awareness and safety levels in workplaces and in the community generally;*

- *better protection of the environment;*
- *flexibility for industry in dealing with changes arising from the introduction of new technology, products and processes;*
- *consistency with other relevant legislative and regulatory frameworks; and*
- *reductions in impediments to trade.* (NOHSC 2001, p. 55)

Following the release of the national standard and the national code of practice, all States and Territories are in a position to replace existing dangerous goods legislation with the new standard and code of practice. Some jurisdictions have enacted harmonised legislation based on the code of practice. Codes of conduct are generally less restrictive than prescribed conditions because they allow flexibility in achieving outcomes.

Review and reform activity

In previous NCP assessments, the Council found that Queensland and Tasmania had met their CPA clause 5 obligations. Table 2.3 details governments' review and reform activity relating to the regulation of dangerous goods.

New South Wales released an issues paper on amending the *Dangerous Goods Act 1975* to apply the national standard. The Government consulted with interested parties and reviewed submissions, and introduced the amending Occupational Health and Safety Amendment (Dangerous Goods) Bill and the cognate Explosives Bill 2003 to Parliament on 17 June 2003. The Bills were passed in early July 2003. New South Wales thus met its clause 5 obligations in relation to dangerous goods legislation.

Victoria completed its review of dangerous goods legislation and enacted new Regulations relating to explosives, storage and handling, and occupational health and safety at major hazard facilities. These Regulations do not substantially change previous arrangements, and retain licences and permits as the primary management tool. The national standard was proclaimed after Victoria finalised its review and reform activity. The measures in the current legislation and regulations reflect the national standard. Victoria thus met its clause 5 obligations in this area.

Western Australia's *Explosives and Dangerous Goods Act 1961* imposes requirements for licences, authorisations, permits and approvals to achieve safe handling. The State's review found that there are better ways of achieving the Act's objectives. It recommended an alignment of licensing requirements for the manufacture of explosives with those for other hazardous chemicals, replacing the inspection and licensing arrangements for vehicles used to transport explosives with the system used to carry other dangerous goods, and industry responsibility for health and safety matters

relating to the storage of explosives and other dangerous goods. The Dangerous Goods Safety Bill 2002 was subsequently introduced to Parliament in December 2002. This Bill will repeal the Explosives and Dangerous Goods Act and the *Dangerous Goods (Transport) Act 1998*. The Government stated that the Bill will reduce restrictions on competition while retaining the necessary public interest restrictions on the use of dangerous goods. It noted that the transport, storage and handling provisions of the Bill are based on national regulations and standards. Passed by the Lower House of Parliament, the Bill is scheduled for debate in the Upper House after September 2003. Reform activity is thus incomplete, but Western Australia will meet its clause 5 obligations if the Bill is passed unchanged in spring 2003.

The South Australian *Dangerous Substances Act 1979* imposes a general duty of care in keeping, handling, conveying, using and disposing of dangerous substances. Licences are required to keep and convey these substances. The State's review of this legislation recommended no changes to the legislation. South Australia stated that the legislation is currently consistent with national standards covering the transportation of dangerous goods, and proposed to introduce legislation that will be consistent with the national standards covering storage, the handling of dangerous goods and the transportation of explosives. South Australia has not completed its reform activity in this area.

The transport of dangerous goods (with the exception of explosives, and class 6.2 and class 7 dangerous goods) is regulated in the ACT under the *Road Transport reform (Dangerous Goods) Act 1995* (Cth) and is fully consistent with the national road transport reform program. The ACT repealed its *Dangerous Goods Act 1984* and incorporated provisions in the *Dangerous Goods Act 1975*. This Act was reviewed in 2000, along with associated provisions in the *Occupational Health and Safety Act 1989* and other Acts. The Government is preparing a new dangerous goods regulatory package which will be consistent with the national standard for the storage and handling of dangerous goods. The package will be submitted to the Legislative Assembly during the spring 2003 session. The ACT did not complete its reform activity in this area.

The Northern Territory reviewed its *Dangerous Goods Act* and replaced it with a new Act in 1998. The Northern Territory presented the Dangerous Goods (Road and Rail Transport) Bill and an amendment Bill to the 1998 Dangerous Goods Act (which had still not commenced) to Parliament in February 2003. Parliament passed the two Bills in late May 2003. The legislation ensures consistency with national agreements on the road and rail transport of dangerous goods, with the Northern Territory drawing heavily on the Commonwealth Act and Regulations. The Northern Territory thus complied with its CPA clause 5 obligations.

Table 2.3: Review and reform of legislation regulating dangerous goods

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Dangerous Goods Act 1975*	Licensing (Does not apply to the transport of dangerous goods by road or rail.)	Review of the Act and associated Regulations (as part of the implementation of the national standard) was completed.	The Government finalised the implementation of the *Occupational Health and Safety Act 2000* and the Occupational Health and Safety Regulation 2001. Amending legislation to apply the national standard was passed in early July 2003.	Meets CPA obligations (June 2003)
Victoria	*Dangerous Goods Act 1985* (s. 15)	Licensing, register of facilities, prior approval of facilities	Review was completed in 1999.	The Government established new regulations relating to explosives, storage and handling, and occupational health and safety measures at major hazard facilities. These measures are consistent with the national standard.	Meets CPA obligations (June 2003)
Queensland	*State Transport Act 1960*	Regulation of the transport of dangerous goods		The legislation was repealed.	Meets CPA obligations (June 2002)
	Dangerous Goods Safety Management Act 2001 Dangerous Goods Safety Management Regulation 2001	Safety obligations		The Government enacted legislation consistent with the national standard for the handling and storage of dangerous goods.	Meets CPA obligations (June 2002)

(*continued*)

Table 2.3 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Western Australia	*Explosives and Dangerous Goods Act 1961*	Licensing, permits, authorisations and approvals	Review was completed in 1998. It found that there are more efficient and effective ways of achieving the objectives of the legislation. It recommended: aligning licensing requirements for manufacture of explosives with those of other hazardous chemicals and for transportation of explosives with existing controls for other dangerous goods; shifting responsibility for safety and accreditation in storing explosives and other dangerous goods to industry; and having less onerous restrictions on sale, display and use of fireworks.	The Dangerous Goods Safety Bill was introduced to Parliament in December 2002 and will repeal the Explosives and Dangerous Goods Act and the *Dangerous Goods (Transport) Act 1998*. This Bill is expected to be debated in the Legislative Council after September 2003 and will introduce reforms that are consistent with national standards.	Review and reform incomplete
South Australia	*Dangerous Substances Act 1979*	General duty of care in keeping, handling, conveying, using or disposing of dangerous substances; licences to keep and convey dangerous substances	Review was completed in 1999. It found that the benefits of restrictions outweigh the costs.	The Act is consistent with national standards for transportation of dangerous goods. South Australia intends to introduce legislation that will widen the application of national standards under the Act to include the storage and handling of dangerous goods and the transport of explosives.	Review and reform incomplete

(*continued*)

Table 2.3 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Tasmania	*Dangerous Goods Act 1976*			The Act was repealed and replaced by new dangerous goods legislation that is based on the National Road Transport Commission's model for the transport of dangerous goods by road, which was expanded to include the use, storage and handling of dangerous goods.	Meets CPA obligations (June 2001)
	Dangerous Goods Act 1998	Code of conduct	Replacement legislation was assessed under the gatekeeper requirements.	Restrictions such as licences were replaced with a code of conduct based on national road transport reforms.	Meets CPA obligations (June 2001)
ACT	*Dangerous Goods Act 1975*	Licensing of premises, vehicles and vessels, and the sale of dangerous goods; special licences for the import, manufacture, sale, supply and receipt of explosives (Does not apply to the transport of dangerous goods by road or rail.)	Review was completed as part of an overall review of the ACT's occupational health and safety legislation. A regulatory impact statement was prepared and released for public comment. The ACT is considering how the national standards can be incorporated into a new legislative framework, accounting for the regulatory impact statement and public consultation.	The ACT is preparing new dangerous goods legislation for submission to the Legislative Assembly in spring 2003.	Review and reform incomplete
Northern Territory	*Dangerous Goods Act* and Regulations	Requirements for the transport, storage and handling of dangerous goods; licensing for businesses, operators of dangerous goods vehicles, shotfirers, gasfitters and autogasfitters	Review completed.	Act was repealed and the new Dangerous Goods Act received assent on 30 March 1998. New legislation, consistent with national agreements, was passed in the Legislative Assembly in late May 2003.	Meets CPA obligations (June 2003)

Specialist and enthusiast vehicle scheme

The Commonwealth has responsibility for legislation relating to uniform vehicle standards. The objective of the *Motor Vehicle Standards Act 1989* is to set uniform standards to apply to road vehicles when they begin to be used in Australia, with particular emphasis on vehicle safety, emissions, anti-theft and energy savings. The standards help improve the safety of other road users, protect the environment and deter crime.

Legislative restrictions on competition

The Motor Vehicle Standards Act allowed for vehicles to be imported under one of two regimes: the full volume scheme, under which most vehicles were imported, and the low volume scheme. While the total cost of full volume certification was substantial, it was spread over a large number of vehicles and thus the cost per vehicle was low. The low volume scheme established concessional arrangements to reduce the unit cost for importers of small numbers of vehicles. In particular, such vehicles were exempt from paying the A$12 000 specific tariff applying to used vehicle imports.

Following a review of the Act, the Commonwealth introduced the specialist and enthusiast vehicle scheme to administer the importation arrangements for used vehicles. The scheme tightened the eligibility criteria for concessional imports of used vehicles. The changes to the Motor Vehicle Standards Act:

- limited imports of used vehicles (under the low volume scheme) to 'specialist' and 'enthusiast' vehicles, and prevented the importation of 'standard' vehicles (for example, vehicles with diesel instead of petrol engines) under this scheme;
- introduced a scheme to regulate registered automotive workshops; and
- required that all imported used vehicles be inspected and approved by registered automotive workshops to ensure each vehicle's compliance with the appropriate national standards.

Used vehicles not defined as specialist or enthusiast vehicles can still be imported subject to the specific rate tariff.

Assessment

For compliance with CPA clause 5, the Commonwealth Government needed to demonstrate that the new restrictions provide a net community benefit and are necessary to achieving the Government's safety, environmental and vehicle security objectives.

The review report provided a public benefit argument for requiring vehicles to be inspected by registered automotive workshops. The review task force considered that the cost of some imported vehicles may rise as a result of the workshop scheme, but judged that the higher level of compliance and the consumer benefits would outweigh this cost. The Council considers that the Commonwealth's decision to implement the registered workshop scheme and the requirement for vehicle inspection is consistent with clause 5 of the CPA.

The introduction of the specialist and enthusiast vehicle scheme is not consistent with the recommendations of the review of the Motor Vehicle Standards Act, so the review report does not provide a public interest justification for the scheme. The review task force recommended retaining the low volume scheme. It specifically rejected the option of limiting 'the number of models by tightening up current eligibility criteria to ensure only "specialist and enthusiast" vehicles are eligible' (Review Task Force 1999, p. 89). The task force stated that this option 'would have an adverse impact on the viability of small business and would reduce consumer choice. It did not see any positive benefits from restricting imports to enthusiast vehicles and did not consider this to be an appropriate course of action' (Review Task Force 1999, p. 89).

To understand the Commonwealth's public interest reasoning, the Council examined the regulatory impact statement prepared by the Department of Industry, Science and Resources in conjunction with the Department of Transport and Regional Services for the amendments to the Motor Vehicle Standards Act. The regulatory impact statement sought to make a case that the number of used vehicles being imported far exceeded the level that had been originally intended and that it had the capacity to threaten Australia's motor vehicle industry, thus warranting the controls introduced by the specialist and enthusiast vehicles scheme.

The Commonwealth Office of Regulation Review, which provides the gatekeeper process for legislative amendments by the Commonwealth Government, considered that the regulatory impact statement did not satisfy the Government's requirements. It raised concerns about the specification of the problem, the statement of the Government's objectives and the analysis of the impact of the changes. In particular, it raised the issue of the Government using legislation aimed at safety and standards setting to implement industry policy without quantifying the costs and benefits.

The Commonwealth approach subsequently received tacit endorsement by the Productivity Commission in its review of post-2005 assistance to the automotive industry. The Commission acknowledged that the A$12 000 specific tariff on used vehicles imposed substantial costs on the community, but considered that unconstrained imports of second-hand vehicles would jeopardise the achievement of a viable domestic automotive production sector capable of operating in the long term without special treatment.

The Council considers that the Commonwealth's legislative approach is not in keeping with the recommendations of the review or the Office of Regulation Review's subsequent regulatory impact statement. However, because the

previous arrangements under the Motor Vehicle Standards Act ran counter to industry policy objectives, and given the subsequent recommendations of the Productivity Commission (see chapter 12, volume 2), the Council considers that the Commonwealth Government's breach of its CPA clause 5 obligations is not significant enough to raise compliance issues.

Rail

The NCP agreements do not specifically cover the rail sector, nevertheless, rail is subject to the CPA's general provisions on competitive neutrality, structural reform of public monopolies and legislation review and reform.

Historically, the level of government ownership in the rail sector has been high — and still is in some States — but private sector involvement is increasing as governments move to privatise their rail businesses. Western Australia and Victoria privatised their rail line and rail transport businesses, although in early 2003 one private franchisee withdrew from the Victorian industry and the Victorian Government decided that country passenger rail services will operate under Government management as a standalone business until the regional rail projects are completed in 2005-06 (Batchelor 2003b). New South Wales maintained Government ownership over its rail line infrastructure, but privatised its rail freight business.

The application of competitive neutrality principles to government rail businesses is relevant, particularly where there is competition (or the potential for competition) with private sector rail businesses. Structural reform obligations arise where governments privatise rail monopolies or introduce competition through third party access regimes. Access regimes establish the terms and conditions under which third parties can negotiate to use the services provided by the rail infrastructure.

Government legislation in relation to rail services typically establishes operating arrangements for government rail businesses (including establishing government-owned monopolies) and imposes requirements aimed at ensuring the safety of rail users. Legislation in these areas has generally restricted competition.

Competitive neutrality

In the 2002 NCP assessment, the Council considered competitive neutrality issues relating to the Commonwealth, New South Wales and Queensland Governments. Capricorn Capital lodged complaints against the National Rail Corporation Limited, a rail freight business then owned jointly by the Commonwealth Government (majority owner), New South Wales and Victoria, and against FreightCorp, a bulk freight transport operator then owned by New South Wales. The Commonwealth Competitive Neutrality

Complaints Office investigated the complaint against the National Rail Corporation. The New South Wales Government deferred referring the FreightCorp complaint to IPART because privatisation was pending, but it addressed one focus of the Capricorn Capital complaint via a review of FreightCorp's community service obligations. After the owner governments sold these rail businesses in February 2002, the remaining competitive neutrality issues lapsed, because private companies are not subject to the CPA competitive neutrality obligations.

The Council found in 2002 that the Queensland Government had satisfactorily addressed the competitive neutrality complaint against Queensland Rail's livestock transportation service, Cattletrain.

Structural reform

In the 2001 NCP assessment, the Council concluded that Victoria had met its CPA obligations in relation to the privatisation of V/Line Freight. It considered structural reform issues for New South Wales and Western Australia in 2002, assessing that these States had also met their structural reform obligations. There are no outstanding structural reform issues.

Legislation review and reform

Several pieces of legislation that regulate the operation of rail businesses and impose requirements for rail safety are relevant to the assessment of governments' compliance with clause 5 of the CPA. Table 2.4 details governments' review and reform of rail sector legislation.

The Council previously reported that New South Wales, Victoria and Western Australia had met their CPA clause 5 obligations. Queensland undertook a public benefit test of the rail safety provisions of the *Transport Infrastructure Act 1994* and the related Regulation. Queensland Transport's review report was completed in March 2003 following consultation with the rail industry and relevant Government agencies. The report accounted for the recommendations of the New South Wales inquiry into the Glenbrook rail accident. The report concluded that net benefits for the community arise from the safety accreditation system that applies to railway managers and operators. The Queensland Government introduced amendments relating to safety provisions to Parliament in the Transport Infrastructure and Another Act Amendment Bill 2003 on 3 June 2003.

Tasmania repealed a number of rail Acts that contained restrictions on competition. The Government retained three rail Acts unamended because the Solicitor-General advised that third party access is guaranteed and the Acts do not contain any restrictions on competition. The Council considers that Tasmania has met its CPA clause 5 obligations in relation to rail legislation.

Table 2.4: Review and reform of legislation regulating rail services

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*National Rail Corporation (Agreement) Act 1991*	Approves and gives effect to an agreement between the Commonwealth, New South Wales and other States relating to the National Rail Corporation Limited.	During the pre-sale process, shareholders agreed to remove the restriction in s. 7 that prevented the corporation from carrying intrastate freight.	Section 7 was repealed through the *Statute Law (Miscellaneous Provisions) Act 2000* in August 2000. National Rail was privatised in February 2002.	Meets CPA obligations (June 2002)
	Rail Safety Act 1993	Allows potential for restraint on competition in the pursuit of the safe construction, operation and maintenance of railways	Glenbrook Inquiry was completed in April 2001.	In response to the Glenbrook Inquiry's recommendations, rail safety regulation arrangements were established separately from the provider of rail network services.	Meets CPA obligations (June 2002)
Victoria	*Border Railways Act 1922*		Review concluded that legislation does not restrict competition.		Meets CPA obligations (June 2001)
	National Rail Corporation (Victoria) Act 1991		Review concluded that legislation does not restrict competition.	National Rail was privatised in February 2002.	Meets CPA obligations (June 2001)
Queensland	Transport Infrastructure (Rail) Regulation 1996 under the *Transport Infrastructure Act 1994* Legislation was not initially scheduled for review	Includes rail safety regulations that could restrict competition	Queensland Transport's review report was completed in March 2003 following consultation with the rail industry and relevant Government agencies. The report accounted for the recommendations of New South Wales' inquiry into the Glenbrook rail accident. The report concluded that net benefits for the community arise from the safety accreditation system that applies to railway managers and operators.	Amendments relating to safety provisions were introduced to Parliament in June 2003.	Review and reform incomplete

(*continued*)

Table 2.4 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Western Australia	*Government Railways Act 1904* and By-laws 1–53, 55, 59, 60, 62, 63, 64, 68, 74, 75 and 76	Raises market power and competitive neutrality issues	Review completed in 1998. Recommendations related primarily to the removal of competitive advantages conferred on the Western Australian Railways Commission.	The *Government Railways (Access) Act 1998* and the *Rail Safety Act 1998* have removed various advantages and disadvantages conferred on the Government business.	Meets CPA obligations (June 2001)
Tasmania	*Burnie to Waratah Railway Act 1939*	Provides a particular company with a competitive advantage by conferring the authority to operate and maintain a railway	Review was deferred pending proclamation of the *Rail Safety Act 1997,* because its safety and access provisions would negate the need for the 1939 Act. The Rail Safety Act was proclaimed. The Tasmanian Solicitor-General advised the Government that there is no need to repeal the 1939 Act because it guarantees third party access and does not contain any restrictions on competition.	Following the Solicitor-General's advice, the Government retained this Act unamended.	Meets CPA obligations (June 2003)
	Don River Tramway Act 1974	Provides a particular company with a competitive advantage by conferring the authority to construct and operate a railway	The review was deferred pending proclamation of the *Rail Safety Act 1997,* because the safety and access provisions will negate the need for this Act.	Act was repealed by the *Legislation Repeal Act 2000.*	Meets CPA obligations (June 2002)
	Ida Bay Railway Act 1977	Excepts Ida Bay Railway from the provisions of the National Parks and Wildlife Act 1950 and the Railway Management Act 1935		Act was repealed in April 2001.	Meets CPA obligations (June 2002)
	Railway Management Act 1935	Gives the Transport Commission the power to issue licences to re-open abandoned railways; exempts railway buildings from planning laws.	The Government no longer owns railways.	Act was repealed.	Meets CPA obligations (June 2002)

(*continued*)

Table 2.4 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Tasmania (continued)	*Railways Clauses Consolidation Act 1901*	Authorises the construction of railways or tramways; sets fares, construction standards, rates and charges		Act was repealed by the *Legislation Repeal Act 2000*.	Meets CPA obligations (June 2001)
	Van Diemen's Land Company's Waratah and Zeehan Railway Act 1895 *Van Diemen's Land Company's Waratah and Zeehan Railway Act 1896* *Van Diemen's Land Company's Waratah and Zeehan Railway Act 1948*	Provides a particular company with a competitive advantage by conferring the capacity to construct and operate a railway; prescribes the construction standards that must be met	Review was deferred pending proclamation of the *Rail Safety Act 1997,* because its safety and access provisions would negate the need for these three Acts. The Rail Safety Act was proclaimed, but the Tasmanian Solicitor-General advised the Government that there is no need to repeal these three Acts because they guarantee third party access and do not contain any restrictions on competition.	Following the Solicitor-General's advice, Tasmania retained these Acts unamended.	Meets CPA obligations (June 2003)
	Wee Georgie Wood Steam Railway Act 1977	Provides a particular company with a competitive advantage by conferring the authority to construct and operate a railway; prescribes the construction standards that must be met	Review was deferred pending proclamation of the *Rail Safety Act 1997*, because its safety and access provisions would negate the need for the 1977 Act.	Act was repealed by the *Legislation Repeal Act 2000.*	Meets CPA obligations (June 2002)

Ports and sea freight

Australia, as an island nation, needs a competitive and well-organised shipping industry because it depends heavily on shipping services to import goods and to export Australian-made products. The sea freight services include liner shipping services and bulk shipping services. Liner shipping mainly involves the transport of nonbulk cargo, usually in shipping containers. Bulk shipping usually involves the transport of a single product such as grain. The industry also covers the management of ports and shipping channels, and the regulation of the vessels coming in and out of port.

Competitive neutrality

Port authorities are often owned and operated by State governments. Clause 3 of the CPA requires governments to apply competitive neutrality principles to significant government businesses. These principles require, at a minimum, that significant government business activities set prices that at least cover costs. Where a government-owned port is classified as a 'public trading enterprise', clause 3 calls for the jurisdiction to adopt a corporatisation model to provide the port with a commercial focus and independence from government for day-to-day decisions.

The Council's 2001 NCP assessment found that governments had mostly completed the process of establishing their port authorities as government-owned corporations subject to competitive neutrality principles (NCC 2001). For the 2002 NCP assessment, the Council considered residual implementation questions and determined that Western Australia and the Northern Territory had met their CPA clause 3 obligations. This 2003 assessment discusses some ongoing issues in Victoria and South Australia.

Victoria

The Council previously considered that Victoria had fulfilled its CPA clause 3 obligations for the Melbourne Port Authority and the Victorian Channels Authority. Following the review of port reforms (the Russell Review), the Victorian Government embarked on a further reform program. Central to this program is a broader role for the Government-owned Port of Melbourne. Acting on the recommendations of the Russell Review, the Government is expanding the role of the Port of Melbourne to include more landside activities and the operation of the shipping channels. This role expansion will entail changes to both the Melbourne Port Authority and the Victorian Channels Authority.

The Government introduced legislation in April 2003 that vests (from 1 July 2003) in the new Port of Melbourne Corporation the management responsibility for the waters and channels that serve the port. The corporation will have operational control over the channels at the entrance to Port Philip Bay (which all shipping entering or leaving the bay must use), as well as the channels for shipping travelling to and from the north of the bay. The management of the channels serving the port of Geelong (which is privately owned) will remain separate from the Port of Melbourne Corporation. The legislation received royal assent on 13 May 2003. The Government's second Bill will introduce further port reforms in spring 2003. The Minister for Transport foreshadowed that this Bill will address other issues arising from the Russell Review, including arrangements for the establishment of commercial and local ports, port safety, security and environmental obligations, governance arrangements for the port of Hastings, the management of channels serving the port of Geelong and the holding and licensing of channels (Batchelor 2003a).

The Essential Services Commission reviewed the effectiveness of existing access regulation. The commission's report, released in May 2003, concluded that access regulation is appropriate for shipping channel services in Port Phillip Bay and the ports of Melbourne and Geelong. It recommended that the Government make some improvements to the existing access regime and apply to the National Competition Council to have the regime certified as effective.

While the Council reported in 2002 that Victoria had met its CPA clause 3 obligations for ports, any subsequent changes to port governance arrangements must be consistent with competitive neutrality policy. Victoria's approach to date appears to address potential competitive neutrality issues.

South Australia

The SA Ports Corporation managed and owned 10 ports in South Australia. The Government corporatised the port entity with a view to improving its performance. Subsequently, the Government privatised operations at the seven main ports in 2001 and enacted legislation to repeal the *South Australia Ports Corporation Act 1994* in September 2002. Responsibility for the remaining three ports — Cape Jervis, Penneshaw and Kingscote — was transferred to Transport SA. Kingscote jetty is used mainly for recreational purposes, while Cape Jervis and Penneshaw are used mainly by ferries. South Australia reported that these ports seek to recover costs but are not profitable. Competitive neutrality principles are not applied to these ports because the Government considers that they are not significant enterprises and that they do not compete with other ports or significantly with other modes of transport. The Council suggests that the Government consider any competitive neutrality complaints about these ports, because a complaint may indicate that the ports have a competitive impact.

Structural reform of port authorities

Over recent years, several jurisdictions privatised or considered privatising their port authorities. Some governments also looked at introducing third party access regimes that cover various port services. Access regimes are a form of regulation aimed at introducing competition in markets supplied by natural monopoly infrastructure.[5] Both privatisation and the introduction of competition via third party access trigger obligations under the CPA clause 4 (see chapter 3, volume 1).

In the 2001 NCP assessment, the Council found that New South Wales, Victoria, Queensland, Western Australia, Tasmania and the Northern Territory had met their CPA clause 4 structural reform obligations relating to ports. The Council extended this finding to South Australia in the 2002 NCP assessment.

However, as noted above, the Victorian Government is in the process of further port reform, including the revision of its channels access regime to account for the changed structure of the port authorities. The Essential Services Commission considered access regulation for shipping channels in some detail and recommended an appropriate form of such regulation. The Victorian Government has not yet responded to the commission's report.

Legislative restrictions on competition

Ports, marine and shipping activity has been subject to government regulation for many years. Many of the statutes date from the early 1900s and were enacted to regulate, manage and set prices and safety standards for the use of shipping channels and port infrastructure. Regulations that restrict competition include:

- provision on access to shipping berths, channels and port infrastructure;
- pilotage requirements;
- marine safety and navigation requirements;
- vessel operating requirements, including crewing;
- provisions that enable organisations governing ports and shipping to determine market products and to set prices and regulations;
- the exemption of organisations governing ports and shipping from paying taxes and government charges; and
- provisions to issue licences for vessels and vessel operations.

5 A natural monopoly exists where it is more cost-effective for one facility, rather than two or more competing facilities, to provide the service.

Review and reform activity

All governments except the ACT listed legislation regulating ports, shipping and marine activity for review under the NCP. Table 2.5 details governments' review and reform activity in this area. The Council previously assessed Tasmania and the Northern Territory as meeting their CPA clause 5 obligations. All other jurisdictions had matters outstanding following the 2002 NCP assessment.

Commonwealth

The Commonwealth Government reviewed several laws relating to ports and shipping. Its Shipping Reform Group reviewed the coastal trade provisions of part VI of the *Navigation Act 1912* in 1997. In response to the group's report, the Commonwealth Government streamlined the processes for engaging in coastal trade that are specified in part VI. It also significantly reduced the charge for a permit to engage in coastal trade and broadened the criteria for issuing these permits. Other elements of part VI — which with other legislation (particularly immigration legislation) allow for cabotage in coastal shipping — are to be subject to separate consideration. The Government did not expand on this matter or clarify whether any further review would consider the NCP issues associated with cabotage's inherent restrictions on competition. The Commonwealth Government has met its CPA clause 5 obligations for those aspects of Part VI not related to cabotage. The Council did not receive a response from the Department of Transport and Regional Services on how it intends to address the cabotage issue. On the review and reform of that part of the legislation related to cabotage, therefore, the Commonwealth did not meet its CPA clause 5 obligations.

The Commonwealth Government reviewed the remainder of the Navigation Act in two stages. The first stage resulted in the Navigation Amendment (Employment of Seafarers) Bill 1998, aimed at removing the employment-related provisions that are inconsistent with the *Workplace Relations Act 1996* and the concept of company employment. The House of Representatives passed this Bill in March 1999, but the Senate rejected a significant number of items in the Bill. The Minister decided that further action on the Bill should be deferred until the Government responds to the second stage of the review.

The second stage of the review, completed in June 2000, was tasked with identifying the nature and magnitude of safety, environmental, economic and social issues that the Navigation Act seeks to address. The terms of reference asked the review's steering committee to identify restrictions on competition, along with the benefits and costs. The second stage considered all parts of the Act except part VI, which had been previously reviewed. The review found that the Act imposes restrictions on competition by:

- requiring all persons wishing to be a ship's master, crew or pilot to be properly qualified;

- requiring all ships to meet minimum standards of construction, equipment, manning and maintenance;
- prescribing employment-related matters; and
- providing for ship inspection and accreditation.

The review sought to estimate the costs to the shipping industry of compliance with these regulations, and compared the costs with the benefits of reduced injuries, ship losses and environmental damage. The review considered alternative approaches to meeting shipping safety and environmental objectives, but concluded that they were impractical. It recommended that Australia continue to base its regulations on internationally agreed standards, except where no international standard exists or where the Australian community expects standards to exceed international measures.

The second stage of the review also considered seafarers' employment arrangements, which had been deferred from the first stage following Senate proposals to amend the Navigation Amendment (Employment of Seafarers) Bill. The review found that some employment provisions are redundant or would be more appropriately addressed under company-based employment arrangements governed by modern industrial relations legislation. It recognised, however, that the legislation should continue to cover employment-related matters derived from international convention obligations that relate to safety or specific shipping operations. The review proposed re-focusing the regulation towards the adoption of performance-based standards, but considered that this approach would need to be consistent with international regulations, of which many are prescriptive in nature.

The Commonwealth Government advised that new shipping legislation, rather than amendments to the Navigation Act, would be an efficient means of introducing changes proposed by the review. It indicated that new legislation cannot be developed, however, until several substantial matters are resolved in consultation with the industry, the States and the Northern Territory to ensure adequate regulatory coverage and workable solutions. The Government has not provided the Council with any information on the outcomes of this consultation, how the new legislation will respond to the recommendations of the review, or the timing of this process. The Government informed the Council in July 2003, however, that the Minister for Transport and Regional Services met with industry representatives in June 2003 as part of the process of a review of shipping issues that is currently under way and that will report to the Government in spring 2003. This review will influence the Government's consideration of the Navigation Act and other shipping matters. The Commonwealth Government thus has not completed its review and reform of the Navigation Act.

The Commonwealth's 1997 review of the *Shipping Registration Act 1981*, which provides for an Australian system of registering ships and mortgages on ships, recommended that Australia continue to legislate to fix conditions

for granting nationality to its ships in accordance with international conventions. The review made recommendations to improve the workings of this legislation and reduce compliance costs, including the removal of the obligation to register certain ships, a restructure of the Australian Register of Ships into four parts, and the simplification of the requirements for the marking of a ship. The Government approved amendments to the Act in 1998 to implement the review recommendations, but the shipping industry raised concerns that proposed legislative amendments could have an impact on finance for shipping, particularly mortgage arrangements. The amendments did not proceed. The Commonwealth Government reported to the Council that it is considering the review recommendations in the context of its broader shipping policy issues. The Government advised in July 2003 that a review of significant shipping issues is under way. The review is expected to present a final report in spring 2003, and the Government will factor the review conclusions into its shipping policy deliberations. The Commonwealth thus has not completed its review and reform of the Shipping Registration Act.

The Australian Transport Safety Bureau, formed in 1999, is a multimodal investigation unit, bringing together the rail, air and maritime investigation functions and the nonregulatory functions of the Office of Road Safety. The *Transport Safety Investigation Act 2003* and the *Transport Safety Investigation (Consequential Amendments) Act 2003* were assented on 11 April 2003 and commenced operation on 1 July 2003. These Acts create a single legislative framework for the Commonwealth's investigation and reporting of rail, shipping and aviation accidents. The Council concluded that the Commonwealth met its review and reform obligations in relation to the Australian Transport Safety Bureau.

The Commonwealth completed reviews of the *Australian Maritime Safety Authority Act 1990* and part X of the *Trade Practices Act 1974* (TPA), and implemented reforms. The Council concluded in the 2001 NCP assessment that the Commonwealth had met its CPA obligations in relation to this legislation.

In February 2002, the Commonwealth asked the Productivity Commission to conduct an inquiry into harbour towage. The Government released the inquiry report on 27 March 2003. The Government supported the report recommendation that jurisdictions should (subject to maintaining safety) modify regulations relating to tug use, size or type, to promote the provision of required levels of service at minimum cost, and that they should harmonise minimum crew qualifications and standards to minimise impediments to movements of crews and tugs across Australian ports. The Commonwealth Government accepted, with qualifications, a recommendation relating to ports' tendering for towage services, and agreed that price monitoring of towage charges where declarations apply should (after a transitional period of three years) be light-handed.

New South Wales

New South Wales repealed several pieces of shipping legislation, consolidating their provisions in the *Marine Safety Act 1998*. It removed some anticompetitive elements of the repealed legislation through its Licence Reduction Program. The Government intends to conduct an NCP review of the remaining competition restrictions in the Marine Safety Act once the Act has been fully operational for 12 months. In its 2003 NCP annual report, New South Wales stated that much of the Marine Safety Act has not commenced, however, because the Government has not finalised the related Regulation on marine safety. New South Wales is awaiting advice from the Commonwealth Government on a review of the Uniform Shipping Laws Code, which provides for common national safety standards for commercial vessels. The Government intends to commence a statutory review of the Act in late November 2003; the review will consider NCP issues. The Act requires the review to be tabled in Parliament by 28 November 2004. Awaiting the finalisation of the national safety standards, New South Wales did not complete its review and reform of the Marine Safety Act.

The *Ports Corporation and Waterways Management Act 1995* established statutory State-owned corporations to manage the State's port authorities, established the Waterways Authority, provides for pilotage and other port charges, and vests responsibility for waterways management and marine safety functions in the Minister. The legislation allows the Minister to fix port access charges, prescribes the structure of some charges and allows ports to fix pilotage charges. The Centre for International Economics completed an NCP review of the Act in December 2001. The review concluded that net benefits for the community arise from the provisions that allow service providers' control of market power, and the Minister's delegation of port safety functions to the port authorities. The review report also noted that each of the port corporations provides for competitive tendering of its more contestable waterfront services. The Council considers that New South Wales met its CPA clause 5 obligations in relation to this Act.

Victoria

Victoria completed a review of the *Marine Act 1988* in December 1999. The review recommended that all rules, standards and determinations issued by the Marine Board should be consistent with NCP principles. Victoria made the changes necessary to give effect to this recommendation. The review also resulted in the Victorian Government amending legislative arrangements and licensing standards for harbour masters, amending licensing standards for pilots, and deciding not to renew the monopoly agreement for the provision of pilotage services. Victoria met its CPA clause 5 obligations in relation to the Marine Act.

The Victorian Government conducted a review of port reform since the mid-1990s. The review focused on the *Port Services Act 1995*, which established

new corporatised entities as successors to the old port authorities. The review examined the structure and operation of Victorian ports. The Government released the review report (the Russell Report) and its response in July 2002, then began to implement 22 actions. One of the Russell Report's key recommendations was to reintegrate the land and water management of commercial trading ports to enable them to better compete with interstate ports.

Major legislative amendments resulting from the Russell Report recommendations were scheduled for the sessions of Parliament in autumn and spring 2003. The Port Services (Port of Melbourne Reform) Bill, passed on 13 May 2003, establishes a new, integrated corporation to manage the port of Melbourne from 1 July 2003. It will replace the Melbourne Port Corporation with the Port of Melbourne Corporation. The Minister's second reading speech stated that the new corporation will be vested with broader functions and powers than those of the Melbourne Port Corporation to 'enable the port to be integrated seamlessly with the wider freight and logistics system and to contribute effectively to the state's overall trade development effort' (Batchelor 2003a). The legislation 'will clearly vest in the new Port of Melbourne Corporation management responsibility for the waters which serve the port, including the shipping channels in those waters' (Batchelor 2003a). The Minister foreshadowed that a second bill to be introduced in the 2003 spring session of Parliament 'will address remaining issues arising from the review, including arrangements for the establishment of commercial and local ports, port safety, security and environmental obligations, governance arrangements for the port of Hastings, the management of channels serving the port of Geelong and the holding and licensing of channels generally' (Batchelor 2003a). The Government did not complete its reform of the Port Services Act, but appears committed to doing so in the second half of 2003.

Queensland

In previous NCP assessments, the Council indicated that Queensland's review and reform of the Harbours (Reclamation of Land) Regulation 1979, the *Transport Operations (Marine Safety) Act 1994* and the *Sea Carriage of Goods (State) Act 1930* were consistent with CPA obligations. Reform of the Transport Infrastructure (Ports) Regulation 1994 under the *Transport Infrastructure Act 1994* was assessed in 2002 as not meeting CPA obligations. The 2002 NCP assessment indicated that the impact on competition may be negligible.

The most significant outstanding matter in the Transport Infrastructure (Ports) Regulation 1994 was the restriction on harbour towage. Queensland Transport commissioned a review of the Regulation. Completed in January 2002, the review recommended allowing individual ports flexibility and discretion for exclusive licensing of towage operators as warranted. The review recommended that any exclusive licences that are issued should be subject to a competitive tender. It recommended also that port authorities should be required, when determining licensing arrangements, to consider

the impacts on port users and other stakeholders, demonstrate the net benefits and make publicly available the conditions of such licences. The Queensland Government accepted the recommendations and amended the legislation in November 2002. Queensland thus met its CPA clause 5 obligations in relation to this matter.

Western Australia

Western Australia's proposed Maritime Bill will introduce new legislation governing maritime activity. The Maritime and Transport Legislation Amendment and Repeal Bill presented in conjunction with the Maritime Bill will repeal the following legislation:

- the *Harbours and Jetties Act 1928*;
- the *Jetties Act 1926* and Regulations;
- the *Lights (Navigation Protection) Act 1938*;
- the *Marine and Harbours Act 1981* and Regulations;
- the *Marine Navigation Aids Act 1973*;
- the *Pilots Limitation of Liability Act 1962*;
- the *Western Australian Marine Act 1982*; and
- the *Shipping and Pilotage Act 1967* and Regulations.

These two Bills were introduced to the previous Parliament in 1999 but lapsed when the Parliament was prorogued before the 2001 State election. The Government intends to redraft the Maritime Bill, partly in response to machinery-of-government changes. The earliest time for the redrafting is the second half of 2003. Given its slow progress in redrafting the Maritime Bill, Western Australia did not complete its review and reform activity in this area.

South Australia

South Australia passed legislation for the sale/lease of the South Australia Ports Corporation in December 2000. The *SA Ports Corporation Act 1994*, which applied to the Ports Corporation's activities, was repealed in September 2002.

The *Harbours and Navigation Act 1993* governs the operations of South Australian harbours and facilities. It provides for harbour management, charges, vessel crewing, the registration of vessels and the licensing of pilot services, and specifies other vessel safety requirements in South Australian

ports. South Australia completed a review of this Act in 1999, but is part of an intergovernmental agreement to develop nationally consistent legislation over the period to 2005. The South Australian Government intends to amend the legislation as changes are agreed at the national level. Pending finalisation of this national process, the Government did not complete its review and reform of this Act.

Table 2.5: Review and reform of legislation regulating port, marine and shipping activity

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Commonwealth	Part X of the *Trades Practices Act 1974*	Industry-specific legislated industry code exempts shipping conferences from ss 45 and 47 of TPA (with exception of third line forcing provisions). Conferences allow liner shipping companies to coordinate their services, set joint freight rates, pool earnings and costs, establish loyalty agreements with customers, rationalise capacity and restrict new entrants to the conference agreements. Australia's trading partners also exempt conferences from competition law.	The Productivity Commission completed a review in 1999. It concluded that restrictions in part X are in the public interest because they result in Australian shippers obtaining quality services at the best possible prices and because there are no more efficient ways of achieving these results. The Productivity Commission recommended various improvements to part X to clarify the scope of the exemptions from the TPA with regard to land-based activities. These would extend the range of sanctions available to the Minister if a conference breached an undertaking.	The *Trades Practices Amendment (International Liner Cargo Shipping) Act 2000* was enacted on 5 October 2000. It effects, with some minor changes, all the recommendations made by the Productivity Commission. The Act limits the exemption relating to rate setting by more clearly defining the service to which the exemption applies. The Act changes the arrangements for the stevedoring conferences. There are exemptions to endorse current stevedoring practices. Generally, importers are given similar countervailing protection from the TPA. The Act grants additional powers to the Minister and the Australian Competition and Consumer Commission to review agreements that may result in an unreasonable reduction in shipping services and/or an unreasonable increase in liner shipping freight prices. The Act also repealed the section that prohibited price discrimination.	Meets CPA obligations (June 2001)
	Australian Maritime Safety Authority Act 1990		Review was completed in 1997. It recommended that the Government continue to undertake the safety regulatory functions of Australian Maritime Safety Authority.	Recommendations were implemented.	Meets CPA obligations (June 2001)

(*continued*)

Table 2.5 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Commonwealth (continued)	*Shipping Registration Act 1912*	Provides for registration of ships and ship mortgages in Australia	Review was completed in 1997, recommending amendments to improve the efficiency of the legislation and reduce compliance costs.	The Government accepted the recommendations and drafted legislative amendments in 1998. The shipping industry, however, raised concerns about the financing implications. The Government informed the Council that it is considering the review recommendations in the context of broader shipping policy issues.	Review and reform incomplete
	Navigation Act 1912	Regulates maritime matters (including ship safety, coastal trade, the employment of seafarers and shipboard aspects of the protection of the maritime environment), wreck and salvage operations, passengers, tonnage measurement of ships, administrative measures relating to ships and seafarers, and processes (part VI) for engaging in coastal trade	The Shipping Reform Group reviewed the coastal trade provisions of part VI of the Act in 1997. The rest of the Act was reviewed in two stages. The first stage was concerned with employment regulation in shipping. The second stage was a comprehensive review of the Act (excluding part VI) that was completed in June 2000. The review found that the benefits of regulating ship safety and environmental protection outweigh the costs of restrictions on competition, and that alternative approaches to meeting shipping safety and environmental objectives would be impractical.	Following the 1997 review, the Government introduced measures to streamline processes and reduce compliance costs in coastal trade. The first stage of the review led to the Navigation Amendment (Employment of Seafarers) Bill 1998. The Bill would have removed the employment-related provisions that are inconsistent with the *Workplace Relations Act 1996*. The Bill was introduced to Parliament on 25 June 1998. The Senate rejected a significant number of items. The Minister deferred the Bill. The second stage of the review covered maritime and safety issues and seafarers' employment arrangements that had been deferred from the first stage process. The Government is still considering the recommendations of the second-stage review. It will take into account a new review of shipping issues that is expected to be completed in spring 2003.	Review and reform incomplete

(*continued*)

Table 2.5 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Marine Safety Act 1998*	Provides for licensing of pilots and navigation requirements	A statutory review, taking NCP issues into account, is to commence on 28 November 2003 and finish a year later.	The Government awaits advice from the Commonwealth Government on the national review of the Uniform Shipping Laws Code.	Review and reform incomplete
	Ports Corporation and Waterways Management Act 1995	Provides for marine administration, safety, port charges and pilotage	Statutory and NCP reviews were completed in December 2001. Reviews found public benefits from the Act.	The Government does not propose any changes to the legislation.	Meets CPA obligations (June 2003)
	Commercial Vessels Act 1979	Provides for the use of certain vessels	Review was not required.	The Act was repealed and replaced by the Marine Safety Act.	Meets CPA obligations (June 2001)
	Maritime Services Act 1935	Provides for harbour operations	Review was not required.	The Act was repealed and replaced by the Marine Safety Act.	Meets CPA obligations (June 2001)
	Marine Pilotage Licensing Act 1971	Provides for pilotage	Review was not required.	The Act was repealed and replaced by the Marine Safety Act.	Meets CPA obligations (June 2001)
	Navigation Act 1901	Restricts market conduct and entry	Review was not required.	The Act was repealed and replaced by the Marine Safety Act.	Meets CPA obligations (June 2001)
	Marine (Boating Safety — Alcohol and Drugs) Act 1991		Review was not required because the Act contained no restrictions on competition.	The Act was repealed and replaced by the Marine Safety Act.	Meets CPA obligations (June 2001)
Victoria	*Marine Act 1988*	Provides for pilotage, licensing of pilots and harbour masters, and vessel registration	Review was completed in 1998. It recommended the retention of vessel registration, amendments to licensing standards and the discontinuation of the monopoly pilotage agreement.	The recommendations were accepted and significant amendments completed.	Meets CPA obligations (June 2003)

(*continued*)

Table 2.5 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Victoria (continued)	*Port Services Act 1995*	Provides port arrangements (relating to structures, objectives, functions and powers), channels access, charges, regulation and governance	Review (the Russell Report) was completed in 2001.	The Government commenced 22 key reforms in 2003, including reintegrating the land and water management at commercial ports.	Review and reform incomplete
	Transport Act 1983 (passenger ferry services)	Provides for ferry operation	Review was completed.	The Act was repealed.	Meets CPA obligations (June 2001)
Queensland	Harbours (Reclamation of Land) Regulation 1979	Provides approval procedures for activities in tidal waters (for example, land reclamation and harbour works)	Act was not for review.	The Act was repealed, with certain approval provisions incorporated in other existing legislation.	Meets CPA obligations (June 2002)
	Transport Infrastructure (Ports) Regulation 1994 under the *Transport Infrastructure Act 1994*	Provides for harbour towage restrictions	Review was completed in January 2002.	The Government accepted all recommendations. Amending legislation was passed in November 2002.	Meets CPA obligations (June 2003)
	Transport Infrastructure (Ports) Regulation 1994 under the *Transport Infrastructure Act 1994*	Provides for port activities outside port limits	Review was completed in 2001.	No reforms were proposed.	Does not comply with CPA obligations (June 2002)

(*continued*)

Table 2.5 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Queensland (continued)	*Transport Operations (Marine Safety) Act 1994* and Transport Operations (Marine Safety) Regulation 1994	Provide for marine safety and pilotage services	Review was completed in 1999.	Legislative amendments took effect from 1 July 2001.	Meets CPA obligations (June 2002)
	Sea Carriage of Goods (State) Act 1930	Provides for operating requirements for the carriage of sea goods	Act was not for review.	The Act was repealed.	Meets CPA obligations (June 2001)
Western Australia	*Port Authorities Act 1998*	Provides for pilotage, licensing, planning and borrowing	Review was completed in 1997. It concluded that the objectives of the legislation could not be achieved by means other than the licensing restrictions. The Act repealed individual port Acts.	No reform is planned.	Meets CPA obligations (June 2001)
	Jetties Act 1926 and Regulations	Provide for licensing and competitive neutrality	No review was undertaken.	The Act is to be repealed by the Maritime Bill and the Maritime and Transport Legislation Amendment and Repeal Bill — due to be redrafted in the second half of 2003.	Review and reform incomplete
	Lights (Navigation) Protection Act 1938	Provides for licensing	No review was undertaken.	The Act is to be repealed by the Maritime Bill and the Maritime and Transport Legislation Amendment and Repeal Bill.	Review and reform incomplete
	Marine and Harbours Act 1981 and Regulations	Provides for competitive neutrality	No review was undertaken.	The Act is to be repealed by the Maritime Bill and the Maritime and Transport Legislation Amendment and Repeal Bill.	Review and reform incomplete
	Ports (Model Pilotage) Regulations 1994		No review was undertaken.	The Act was repealed.	Meets CPA obligations (June 2001)

(*continued*)

Table 2.5 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Western Australia (continued)	*Ports Function Act 1993*	Restricts market conduct	No review was undertaken.	The Act was repealed.	Meets CPA obligations (June 2001)
	Shipping and Pilotage Act 1967 and Regulations	Govern pilotage services (licensing and competitive neutrality)	No review was undertaken.	The Act is to be repealed by the Maritime and Transport Legislation Amendment and Repeal Bill.	Review and reform incomplete
	Albany Port Authority Act 1926 and Regulations *Bunbury Port Authority Act 1909* and Regulations *Dampier Port Authority Act 1985* and Regulations *Fremantle Port Authority Act 1902* and Regulations *Geraldton Port Authority Act 1968* and Regulations *Port Hedland Port Authority Act 1970* and Regulations *Esperance Port Authority Act 1968*	Restrict market conduct and market entry	No review was undertaken.	The Act was repealed.	Meets CPA obligations (June 2001)

(*continued*)

Table 2.5 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Western Australia (continued)	*Western Australian Marine Act 1982*	Provides for licensing	No review was undertaken.	The Act is to be repealed by the Maritime Bill and the Maritime and Transport Legislation Amendment and Repeal Bill.	Review and reform incomplete
South Australia	*South Australian Ports Corporation Act 1994*	Restricts market conduct and market entry		The Ports Corporation was sold in November 2001. The Act was repealed on 5 September 2002.	Meets CPA obligations (June 2003)
	Harbours and Navigation Act 1993	Provides for harbour operations	Review was completed in 1999.	The Government intends to make amendments progressively until 2005, as national standards are agreed.	Review and reform incomplete
Tasmania	*Marine Act 1976*	Restricts market conduct and market entry	Review was completed.	Act was repealed in 1997 and replaced by the *Marine and Safety Authority Act 1997,* the *Marine and Safety Authority Act 1997* and the *Marine (Consequential Amendments) Act 1997.* These Acts were assessed under gatekeeper requirements as not restricting competition.	Meets CPA obligations (June 2001)
	Roads and Jetties Act 1935	Provides for access restrictions	A minor review was conducted. It recommended retaining access restrictions in the public interest.	Recommendations were accepted.	Meets CPA obligations (June 2001)
	Hobart Bridge Act 1958		Review was completed.	Act was repealed in 1996.	Meets CPA obligations (June 2001)
	Port Huon Wharf Act 1955	Provides for access restrictions	Review was completed.	Act was repealed in 1997.	Meets CPA obligations (June 2001)

(*continued*)

Table 2.5 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Northern Territory	*Darwin Port Corporation Act*	Establishes the Darwin Port Authority; prescribes monopoly powers, licensing arrangements and fees, stevedoring licensing, the control of shipping movements in port, exemptions from local government charges, exemptions from pilotage requirements, and partial exemption from the corporations law	Review was completed in 2001.	The Government accepted most of the recommendations, but not the recommendation to remove the licensing of stevedores. The Government considered licensing to be the most cost-efficient way of monitoring environmental health and safety at Darwin Port.	Meets CPA obligations (June 2001)
	Darwin Port Authority Act and By-laws			Legislation was replaced by the Darwin Port Corporation Act in 1999. Repeal of the legislation was completed in mid-2002.	Meets CPA obligations (June 2001)

(*continued*)

Table 2.5 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Northern Territory (continued)	*Marine Pollution Act*	Protects marine and coastal environments by minimising intentional and negligent discharges of ship-sourced pollutants; exempts the Australian Defence Force and foreign ships used only for government noncommercial services	Review was completed in September 2001. It found that the restrictive elements of the Act are justified under NCP principles.	The Government endorsed the review's recommendations.	Meets CPA obligations (June 2002)
	Marine Act and Regulations	Applies national uniform shipping law codes; provides for licensing of certain commercial operations, permits for the operation of hire-and-drive vessels and certificates of competency	Review was completed in 2001. It found that restrictions in the Act are in the public interest.	The Government accepted the review recommendations.	Meets CPA obligations (June 2001)

(*continued*)

Air transport

Structural reform

Sydney Basin airports (Commonwealth)

In its 2001 NCP assessment, the Council noted the Clause 4 review of the Sydney Basin airports and raised the issue of the structure of the Sydney airports. In 2002, the Council accepted the Commonwealth Government's arguments for the structure of the airports and considered that the Government had met its CPA clause 4 obligations. On 9 April 2003, the Commonwealth Government announced the strategy for the sale of Bankstown, Camden and Hoxton Park airports. The sale process is currently under way and is expected to be completed at the end of October 2003. In announcing the sale, the Commonwealth Government also noted that, given the changes to the aviation environment since 11 September 2001, the collapse of Ansett and the trend to using larger aircraft, particularly on regional routes, there is no longer a need for Bankstown Airport to develop an overflow capacity to supplement Sydney Airport.

Airservices Australia (Commonwealth)

Airservices Australia is a Commonwealth Government-owned business providing air traffic management, air navigation support services and aviation rescue and fire-fighting services at airports. Under the Civil Aviation Regulations 1988, only Airservices and the defence forces can provide air traffic control services.

In its 2001 NCP assessment, the Council noted the Government's moves to introduce contestability in Airservices Australia's provision of services. This introduction depended on the Civil Aviation Safety Authority (CASA) developing a regulatory framework to govern the provision of aviation safety services delivered by Airservices, such as air traffic control services and aerodrome rescue and fire-fighting services. CASA subsequently developed the aviation safety Regulations, which would have resulted in aerodrome operators becoming responsible for ensuring the provision of aerodrome rescue and fire-fighting services. The Governor-General made these Regulations on 26 June 2002, but the Opposition gave notice of a disallowance motion against the Regulations in September 2002.

In November 2002, the Government advised the Opposition that it would amend the regulatory package to address the Opposition's concerns. These

amendments were made on 1 May 2003 and Australia now has a legislated safety regime to govern the provision of aviation safety services. The regulatory amendments include the introduction of a list of 'approved providers'. Only CASA can approve persons on this list. New providers can still obtain approval, so long as amendments to the list of approved providers do not face opposition in Parliament.

The current aviation safety Regulations mean that Airservices Australia remains effectively the monopoly provider of air traffic services, air navigation support services and aerodrome rescue and fire-fighting services. The Government sought to introduce competition in these areas, and regulation of the industry (by CASA) is separated from the service provider. The Commonwealth Government has met its CPA clause 4 obligations in relation to air safety services.

Review and reform activity

Some regulation of intrastate air passenger transport routes remains in the two geographically large States that have a substantial requirement for domestic aviation services. The Regulations in Queensland and Western Australia restrict competition by granting rights to service particular regional or remote locations. Table 2.6 details governments' review and reform activity in this area.

Queensland

In 2000, Queensland completed an NCP review of the *Transport Operations (Passenger Transport) Act 1994*, which includes aviation. While air transport in Queensland is largely deregulated, services to some remote areas are restricted. The services are regulated through exclusive service contracts that specify minimum service levels, such as aircraft type, frequency of service and fares. Each contract is for five years, after which it is re-tendered.

The review found that these restrictions are in the public interest because the contracted operators provide services that otherwise would not be available, or would be available only at greater cost or with lower service levels. The review report argued that, because the exclusive service contract is open to tender every five years (that is, there is competition for the market), it is likely to provide a net community benefit. The review recommended that the Government retain the tendering arrangements. The Government considered the review recommendations and agreed that the regulation is justified on public interest grounds.

One of the regional service providers collapsed as a result of the airline industry difficulties in 2001, and Queensland Transport established air service contracts while it conducted a review of regional air services. In May 2002, the Government determined the routes and minimum service levels to

apply to future regional air service contracts and issued a new tender. Eight airlines tendered for contracts, which will continue to attract subsidies. Two airlines were selected in July 2002 to provide the services for five years.

The Council agrees with the public interest arguments for basing the provision of remote air services on competitive tendering processes. The regulation recognises the low scope for competition in the provision of air services to remote areas with small populations. Queensland met its CPA clause 5 obligations in relation to the regulation of the aviation transport sector.

Western Australia

Western Australia completed a review of the *Transport Co-ordination Act 1966* in 1999. The Act provides for the licensing of vehicles used for commercial purposes (including aircraft) and the regulation of the transport services provided by these vehicles. The review report recommended that this general provision be circumscribed so licences are required only where there is a public benefit. The Government endorsed this recommendation and intends to repeal this section of the Act and replace it with provisions that relate to the requirement for a licence to be in the public interest.

Western Australia reported that the collapse of Ansett in September 2001 had a significant impact on the intrastate air transport market in Western Australia. It therefore further reviewed its intrastate aviation policy, including the application of the licensing provisions in the Transport Co-ordination Act. Conducted by consultants, this review was completed in November 2002. It did not explicitly seek to review NCP aspects of intrastate aviation policy, but one of its aims was to recommend which Western Australian airports and intrastate routes have the passenger throughput to sustain competition.

As a result of the review report, the Government is considering a number of steps. First, for the network that connects Perth with major coastal towns (including Exmouth, Carnarvon, Geraldton, Albany and Esperance), the airline Skywest was given an extension on its monopoly for the nine months to May 2003. (These are routes with passenger movements below 55 000 to 60 000 per year.) The Government now proposes to extend this licence for another two years, subject to a review being completed by May 2004, after which the Government would decide either to deregulate the network from May 2005 or go to competitive tender. Second, the Government is considering issuing competitive tenders for other routes that cannot sustain competition. This would probably involve the issue of exclusive licences (sole operating rights) for a period of up to three years. Third, the Government is undertaking consultation with some mining companies in the Northern Goldfields area, and with other companies in the wider resource sector, to ascertain whether there is scope for consolidating the charter services that they use with the regular passenger transport services to nearby towns.

It appears likely that Western Australia will take some time to finalise the legislative arrangements for intrastate aviation. The State thus did not complete its review and reform activity in the aviation transport sector. Given that the precise nature of the reform is unknown, the Council cannot assess whether any of the remaining restrictions are justified in the public interest.

Table 2.6: Review and reform of legislation regulating air transport

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Queensland	*Transport Operations (Passenger Transport) Act 1994*	Provides for exclusive service contracts to operate passenger transport services on particular routes for a five-year period	The 2000 NCP review found that deregulation of the provision of aviation services to the currently restricted routes could lead to a fall in services. Quality provision of air passenger services would not be economic without subsidisation or the provision of an exclusive right. The review found that submitting each contract to tender every five years is a source of competition. The review did not recommend any change to current arrangements.	The Government accepted the review recommendations and maintained the competitive tendering arrangements.	Meets CPA obligations (June 2003)
Western Australia	*Transport Co-ordination Act 1966*	Provides for licensing of vehicles used for commercial purposes; regulates transport services provided by those vehicles	The 1999 NCP review recommended the removal of the requirements that public vehicles be licensed, except where there is a public benefit. A review of interstate air services was conducted in 2001 following the collapse of Ansett.	The Government endorsed the recommendations of the first review in November 2000. Following the review of interstate air services, the Government extended the licence to operate on the network connecting Perth with major coastal towns. It will undertake a further review of the provision of services to these routes from 2005. The Government is also considering changes for other air routes.	Review and reform incomplete

Other transport

Queensland's *State Transport (People Movers) Act 1989* provides for licences and agreements for the installation of 'people movers'.[6] Queensland had considered repealing the Act but decided to retain provisions relating to the existing licence holders (of which there are two: the Cairns–Kuranda rainforest cableway and the Broadbeach monorail) to preserve their legal rights. Under legislation that the Government plans to introduce in the second half of 2003, all new people mover proposals will be regulated under the framework of the *Integrated Planning Act 1997*. This Act provides for planning and development proposals to be managed across local and State levels to ensure they are ecologically sustainable. The Act does not contain any provisions for licensing new people mover projects on private land. Proposals for projects over national parks are subject to the *Nature Conservation Act 1992* and the standard features of a competitive bidding process. Such a process would introduce the extent of competition practicable. The Council thus finds that Queensland met its CPA clause 5 obligations in this transport activity. Table 2.7 summarises Queensland's review and reform activity in this area.

[6] The Act refers to a 'people mover system' as 'a transport system designed and intended for use for the carriage of people by means of a fixed structure on a route that entails carriage over and above public land or water within Queensland other than carriage by (a) a railway …; (b) by any moving walkway, belt or escalator'.

Table 2.7: Review and reform of legislation regulating other transport

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Queensland	*State Transport (People Movers) Act 1989*	Provides for licences for the provision of people mover services	Queensland Transport undertook a public benefit test in early 2003 that found that the two people mover licences in place do not restrict competition for the carriage of people because alternative means of transport are available.	The Government is retaining the Act to preserve the legal rights of the two existing licensees. Amendments are being introduced later in 2003 which relate to ensuring ecological compliance and will not entail any restrictions on competition.	Meets CPA obligations (June 2003)