

7 Retail trading

Legislation significantly restricts competition in three areas of retailing. Prescribed shop trading hours prevent sellers from trading at the times they consider appropriate and include provisions that discriminate between sellers on the basis of their location, size or product sold. Liquor licensing laws frequently preclude entry by responsible sellers and favour some sellers at the expense of others, while legislation governing petrol retailing restricts entry and reduces the ability of sellers to change prices.

Shop trading hours

Historically, governments have restricted shop trading hours for reasons include observing the Sabbath, protecting small businesses from competition from larger competitors and reducing the need for shop employees to work outside traditional working hours. Pressure to change laws restricting trading hours has arisen from a range of sources, including retail business owners and consumer groups. Changing social and work patterns — such as increasing numbers of dual-income households and more flexible and longer working hours — are a significant driver of reform. All governments, except the Northern Territory (which has no legislation that specifically regulates trading hours), included trading hours legislation on their legislation review programs.

Legislative restrictions on competition

At the commencement of the National Competition Policy (NCP) legislation review program, shop trading hours varied significantly across Australia. Jurisdictions (other than the Northern Territory) had various arrangements, including designated days for late night shopping and restrictions on Sunday trading. Often, central city and tourist shopping precincts had fewer restrictions than those in suburban and rural areas, and discrimination frequently occurred between retail outlets according to their size or the product they sold. Restrictions prevent consumers from shopping at convenient times, and they prevent businesses that might benefit from extended trading hours (including major retailers, national specialty chains, franchisees and many small businesses) from opening. Many of these restrictions have been removed following reviews that found they did not provide a net public benefit.

In previous NCP assessments, the National Competition Council concluded that New South Wales, Victoria, Tasmania and the ACT had met their NCP obligations regarding the regulation of trading hours. No assessment was required for the Northern Territory. Queensland, South Australia and Western Australia retained significant legislative restrictions on competition following the 2002 NCP assessment.

Review and reform activity

Table 7.1 summarises restrictions on trading hours in each jurisdiction and review and reform activity to date. In addition to restrictions on trading hours, some governments also legislate to restrict trading hours for particular activities, such as the hours in which hawkers and door-to-door sellers may operate. The Council also identified several examples of trading-related legislation, which are summarised in table 7.2 — in these instances all jurisdictions completed appropriate review and reform activity by 30 June 2003 and therefore comply with their Competition Principles Agreement (CPA) clause 5 obligations in this area.

Queensland

The Queensland Industrial Relations Commission, using its powers under the *Trading (Allowable Hours) Act 1990*, restricts:

- Monday to Saturday trading hours for ‘nonexempt’ stores;¹ which may open between 8 am and 9 pm on Monday to Friday and between 8 am and 5 pm on Saturday.
- Sunday trading by nonexempt stores which may open between 9 am and 6 pm in the south-east Queensland region and designated tourist areas. Regardless of location, hardware stores are permitted to trade on Sundays between prescribed hours.

Queensland has not undertaken an NCP review of its legislation. Instead, the Queensland Industrial Relations Commission addresses questions about trading hours by determining applications for extended trading hours. Further extensions of trading hours are thus occurring on an application basis. The Act requires the commission to consider a range of criteria (including the public interest) when determining an application for extended trading hours. In addition, the Queensland Government made submissions to

¹ Exempt shops are retailers that sell particular categories of good nominated in the Act. The categories include antiques, florists, various foods, pet shops, sporting goods etc. In addition ‘independent retail shops’ (defined in the Act as shops employing fewer than 20 employees in one location or fewer than 60 Statewide) have unrestricted opening hours.

the commission, drawing the commission's attention to the NCP public interest criteria to consider in its decisions. The Council previously indicated that the commission's process for assessing applications is sufficiently public, independent and transparent.

The commission's decisions on trading hours liberalised trading hours arrangements. In December 2001, the commission granted an application for Sunday trading in the local government area of the City of Brisbane. To rationalise inconsistent trading hours zones in south-east Queensland, the Government legislated uniform Sunday trading hours (from 9 am to 6 pm) for the whole south-east Queensland region, to take effect from 1 August 2002. Also, the word 'regulate' in the objects of the Act was replaced with the word 'decide'. This clarified that an object of the Act is to decide allowable trading hours of shops as opposed to regulating hours (which had been interpreted as requiring the restriction of hours).

Assessment

Queensland retained legislative restrictions on shop trading hours that apply to only large, nonspecialist shops, and it did not provide a public benefit case for the discriminatory treatment of these retailers. On the other hand, Queensland has extended Sunday trading to a considerable area of the State and established an appropriate process for considering proposals to remove the remaining restrictions. The Council assesses Queensland as having met its CPA obligations in relation to trading hours legislation.

Western Australia

At June 2003, Western Australia's *Retail Trading Hours Act 1987*:

- restricted Monday to Saturday trading hours for all shop categories to prescribed opening and closing times. 'Small' retail shops and 'special' retail shops had longer opening hours than those of 'general' retail shops;²
- prohibited Sunday trading for 'general' retail shops outside tourism precincts; and
- did not apply north of the latitude of 26 degrees.

The Western Australian Ministry of Fair Trading completed a review of the Act in June 1999 but the review report has not been made public. No further developments were noted in Western Australia's 2001 and 2002 NCP annual reports.

² The Act distinguished between 'general', 'small' and 'special' retail shops according to their size or types of good sold. General retail shops are larger, nonspecialist retailers such as department stores and larger supermarkets.

The Council discussed competition restrictions in trading hours arrangements with the Western Australian Government during the 2002 NCP assessment. The Premier stated that the Government appreciated the need for reform of retail trading arrangements and would take steps to progress this reform during 2002-03. The Government subsequently established a Ministerial taskforce to review of the retail trading hours issue in the context of the changing economic and social climate in Western Australia and the experiences of other jurisdictions. The taskforce published a public consultation paper outlining reform options and received submissions.

On 24 June 2003, the Government announced that:

- retail trading hours in the Perth metropolitan area would remain unchanged until after the next State election in early 2005;
- from mid-2005, weeknight trading hours would be extended to 9 pm; and
- a review of trading hours would take place three years after the passage of legislation giving effect to the above changes.

The Government wrote to the Council on 14 July 2003 explaining its decision and providing, for the first time, a confidential draft copy of the 1999 review report. The review recommended:

1. extending general trading hours to 9 pm;
2. redefining a small retail shop as one with up to 20 rather than 10 employees; and
3. developing new legislation to replace the Retail Trading Hours Act five years after the extension of weeknight trading.

Although the Government rejects recommendations two and three, it considers that its reforms are largely consistent with the recommendations of the 1999 review. It also considers that the staged implementation of change provides certainty by removing some legally questionable aspects of existing arrangements and through improved protection for small retailers.

The Government considers that extended Sunday trading is not in the public interest because of its unfavourable effect on the recreational activities of retail sector workers and small retail owner-operators, and on the competitiveness of small retail businesses.

Assessment

Significant remaining restrictions apply to trading hours in Western Australia. The Government has not publicly released a review report. The Government's letter does not provide a sufficiently robust public interest case to support the retention of restrictions that have been largely removed in all other jurisdictions without adverse social or economic impacts. The Council

does not consider that the changes announced by the Western Australian Government, involving the retention of restrictions until 2005, constitute an appropriate transitional reform measure underpinned by a public interest case. Accordingly, the Council retains its assessment of June 2002 that Western Australia has not met its CPA clause 5 obligations in relation to shop trading hours.

South Australia

South Australia's *Shop Trading Hours Act 1977* governs trading hours in the Adelaide metropolitan area.³ The legislation discriminates between exempt and nonexempt shops based on size and product sold. Exempt shops are specialist retailers and smaller general shops and benefit from unrestricted trading. The Act restricts trading hours for nonexempt shops, defined as larger general retailers (including department stores), variety stores and larger supermarkets. A review of the Act in 1998 led to new trading hours arrangements, which came into effect in June 1999. The new arrangements provided some extension to trading hours for nonexempt shops but retained the following restrictions:

- Monday to Friday trading by nonexempt shops was allowed until 9 pm in the central business district, but only until 7 pm in the suburbs (except for Thursday, when trading was allowed until 9 pm); and
- Sunday trading by nonexempt shops was permitted between prescribed hours in the central business district but only on six Sundays a year in the suburbs.

South Australia amended its Act again in December 2000 to extend trading hours for shops in the Glenelg Tourist Precinct. It did not, however, provide a public benefit explanation for the restrictions still in place (for example, it did not release the 1998 review report) or a detailed comparison of the review's recommendations and the Government's decisions.

During the 2002 NCP assessment, South Australia undertook to explore options for reform. In August 2002, the South Australian Government introduced a Bill to extend shop trading hours, but the Legislative Council rejected the reforms, partly as a result of concerns about their industrial relations implications.

In May 2003, the Government introduced legislation to substantially reform trading hours. Passed by Parliament on 5 June 2003 and proclaimed on 19 June 2003, the new Act:

³ Local governments determine trading hours in South Australia's regional areas

- extends Sunday trading to suburban areas between 11 am and 5 pm, commencing with the start of summer daylight saving on 26 October 2003; and
- allows shopping until 9 pm in all areas on weekdays, from 7 July 2003.

Assessment

South Australia implemented significant reforms, although some discrimination against larger general retailers remains. Unlike their smaller, specialist competitors, these retailers cannot open after 9 pm on weekdays, 6 pm on Saturdays and 5 pm on Sundays, and no public interest case supports these restrictions. Unlike Queensland, South Australia has no standing mechanism to bring about further liberalisation of trading hours.

The Council assesses South Australia as not complying with its CPA clause 5 obligations in this area, but recognises that the Government's recent reforms mean that the cost of the remaining restrictions is relatively small.

Tasmania

At the time of the 2002 NCP assessment, Tasmania had passed legislation to remove restrictions and allow unrestricted trading except on Good Friday, on Christmas Day and before noon on Anzac Day. The legislation did not initially come into operation because Tasmania wished to allow any local referendums on shopping hours to be conducted in conjunction with the 2002 local government elections. No local referendums were sought and the legislation commenced operation on 1 December 2002.

The Council has not revisited its 2002 NCP assessment that Tasmania has met its CPA obligations in relation to trading hours reform.

Table 7.1: Review and reform of legislation regulating shop trading hours

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
New South Wales	<i>Factories, Shops and Industries Act 1962</i> (part 4 covers trading hours)	No restrictions on Monday–Saturday trading hours; restrictions on Sunday trading and public holiday trading (but exemptions are readily granted)	Review of part 4 was completed. New South Wales advised that a comprehensive public benefit test is in place to assess remaining restrictions.	Widespread granting of exemptions has reduced the impact of restrictions.	Meets CPA obligations (June 2002)
Victoria	<i>Shop Trading Act 1987</i> and the <i>Capital City (Shop Trading) Act 1992</i>	Restrictions on Saturday and Sunday trading hours depending on shop type and location	Review was completed in 1996.	<i>Shop Trading Reform Act 1996</i> removed restrictions except for trading on Christmas Day, Good Friday and Anzac Day. Easter Sunday restrictions were introduced in 2003.	Meets CPA obligations (June 1999)
Queensland	<i>Trading (Allowable Hours) Act 1990</i> and Regulations	Restrictions on Monday–Saturday trading hours for nonexempt shops (shops not predominantly selling nominated products); prohibition on Sunday trading by nonexempt stores outside major cities and tourist areas; exemption from restrictions for ‘independent retail shops’ (shops employing fewer than 20 employees and fewer than 60 Statewide).	Review was not undertaken. The Queensland Industrial Relations Commission determines applications for extended trading hours. This process includes a consideration of the public interest and has been assessed by the Council as being sufficiently public, independent and transparent.	Decisions of the Queensland Industrial Relations Commission to liberalise trading hours resulted in the removal of some restrictions. In February 2002, the Government introduced amendments to the Act providing uniform Sunday trading hours for nonexempt stores in south-east Queensland from August 2002.	Meets CPA obligations (June 2003)

(continued)

Table 7.1 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Western Australia	<i>Retail Trading Hours Act 1987 and Regulations</i>	Restrictions on Monday–Saturday trading; prohibition on Sunday trading outside tourism precincts, where it is restricted; no restrictions above the 26th parallel.	Initial review was completed in 1999. The review report was not published. The current Government established a Ministerial taskforce to conduct a review of retail trading hours. The taskforce released a discussion paper but did not publish a report.	In June 2003, the Government announced that it would not change trading hours until 2005.	Does not meet CPA obligations (June 2003)
South Australia	<i>Shop Trading Hours Act 1977</i>	Controls on the hours during which shops may open; variation in allowed opening hours based on the day of the week; variation in permitted opening hours depending on shop location, shop size and products sold; restrictions on Monday–Saturday trading hours; prohibition on most Sunday trading in the Adelaide metropolitan area except within the central business district, where hours are restricted	Review was completed in 1998. Review report is not publicly available.	Limited changes took effect from June 1999. Key restrictions were retained. Extended trading hours were introduced in the Glenelg Tourist Precinct in December 2000. In June 2003, Parliament legislated to extend Sunday trading to the suburbs between restricted hours and allow trading by larger stores to 9 pm on weeknights.	Does not meet CPA obligations (June 2003)

(continued)

Table 7.1 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Tasmania	<i>Shop Trading Hours Act 1984</i>	Prohibition on major retailers (shops employing more than 250 people) trading during prescribed periods (Sundays, public holidays and weekdays after 6 pm other than Thursday and Friday).	Reviews were completed in 2000 and 2002, both recommending removal of restrictions.	Restrictions were removed with effect from 1 December 2002.	Meets CPA obligations (June 2002)
ACT	No specific shop trading hours legislation	After a period of liberal trading arrangements, reintroduction of restrictions for larger shopping centres in 1996.		<i>Trading Hours Act 1962</i> was repealed in 1997 due to a lack of community support for trading hours restrictions.	Meets CPA obligations (June 1999)

Table 7.2: Review and reform of trading-related legislation

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
New South Wales	<i>Funeral Services Industry (Days of Operation) Act 1990</i>	Regulates the days of operation of businesses providing funeral, burial or cremation services.		Act was repealed.	Meets CPA obligations (June 2001)
Queensland	<i>Hawkers Act 1994</i> and <i>Hawkers Regulation 1994</i>	Prevents hawkers operating between 6 pm and 7 am.	A reduced NCP review was completed.	Act was repealed.	Meets CPA obligations (June 2002)
Tasmania	<i>Sunday Observance Act 1968</i>	Restricts a number of business activities on Sunday.		Act was repealed.	Meets CPA obligations (June 2001)
	<i>Bank Holidays Act 1919</i>	Restricts bank trading days.		Act was reformed consistent with NCP principles.	Meets CPA obligations (June 2001)
	<i>Door to Door Trading Act 1986</i>	Restricts the hours in which door to door sellers can operate.	A minor review of this Act was completed and the restrictive provisions were justified as being in the public interest.		Meets CPA obligations (June 2002)
ACT	<i>Door to Door Trading Act 1991</i>	Restricts the hours in which door-to-door sellers can operate.	Intradepartmental review was completed in 2001. The review concluded that that the restrictions provide a net public benefit.	Act was retained without reform.	Meets CPA obligations (June 2002)
Northern Territory	<i>Hawkers Act</i>	Restricts selling by hawkers on land that is reserved or dedicated as a public road.	Review was completed in August 2000.	Act was repealed.	Meets CPA obligations (June 2001)

Liquor licensing

Governments have historically sought to minimise harm from the consumption of alcohol. Their efforts have included prohibiting consumption by certain members of the community (such as minors), establishing requirements for the responsible sale and serving of alcohol and restricting the number, type and trading hours of licensed premises.

Licensing laws that prescribe accepted community standards relating to alcohol consumption — such as a minimum age for legal consumption, requirements that liquor retailers be suitable persons with adequate knowledge of the relevant Act, and measures to prevent the sale of alcohol to intoxicated persons — do not raise NCP compliance issues. On the other hand, licensing laws that prevent responsible sellers from entering the industry, that discriminate between sellers of similar products/services and that impose arbitrary restrictions on sellers' behaviour, do little to achieve harm minimisation objectives. The evidence shows, for example, no clear relationship between the number of outlets selling liquor and the level of consumption.⁴ Australia's more recent experience suggests that misuse of alcohol is better addressed via better drinking environments and more direct targeting of problems such as drink-driving and under-age drinking.

Legislative restrictions on competition

Legislation governing the sale of liquor involves three broad categories of competition restrictions. First, some restrictions limit entry by potential sellers. Tasmania, for example, prohibits supermarkets from holding a liquor licence. Legislation in New South Wales, Western Australia, South Australia and the Northern Territory contains a public needs test that requires licence applicants to demonstrate a public need for an additional liquor outlet in a particular area. Such a provision protects incumbent sellers because potential new entrants must show that existing outlets do not already adequately serve the area. In almost any other market, legislation would not facilitate an objection to the establishment of a new business on the basis that consumers' needs are already satisfied.

A second category of restrictions discriminates between different sellers of packaged (take-away) liquor. In Queensland, only the holders of a general (hotel) licence can sell packaged liquor to the public. In Tasmania, the former '9 litre rule' prevented nonhotel sellers of packaged liquor from selling less than 9 litres of liquor in any one sale, whereas hotel bottle shops could sell

⁴ Australia, Canada and New Zealand are among many developed countries to have experienced a general downward trend in average consumption since the late 1970s. This trend occurred at a time of considerable deregulation of the alcohol industry, generally greater availability of alcoholic beverages and an increased number of liquor outlets (Roche 1999, p. 39).

liquor in any quantity. In Western Australia, only holders of a hotel licence are automatically entitled to sell packaged liquor to the public on Sundays.

A third category of restriction regulates the market conduct of licence holders. In Queensland, hotels are limited to a maximum of three bottle shops, which must be detached from the hotel premises. Each bottle shop must be no more than 150 square metres, and drive-in facilities are prohibited. In several jurisdictions, a condition of a packaged liquor licence is that the licensed premises must be devoted entirely to the sale of liquor and must be separate from premises used for other commercial premises.

Australia has in excess of 8000 hotels, clubs, taverns and bars and almost 4000 packaged liquor outlets. Annual household expenditure on liquor is in excess of A\$7 billion (ABS 2000). Legislation that prevents entry, discriminates against some types of competition and restricts competitive behaviour can have a significant economic impact in an industry of this size.

Review and reform activity

In the 2002 NCP assessment, the Council assessed Victoria and the ACT as having met their CPA obligations in this area. Progress in the remaining States and Territories is discussed below. Table 7.3 summarises governments' progress in reviewing and reforming liquor licensing legislation.

New South Wales

New South Wales has completed its review of the *Liquor Act 1982* and the *Registered Clubs Act 1976*, but the Government has not responded to the review or published the review report. The Act contains a needs test that allows any person who would be affected by a licence application to object on the grounds that existing facilities meet the needs of the public. The discussion paper issued by the review states that it is questionable whether the test succeeds in protecting community interests and achieving the harm minimisation objectives of the legislation. The discussion paper states that 'there are very few examples of persons, other than direct competitors, using these provisions in an attempt to prevent or minimise alcohol-related harm' (Department of Gaming and Racing, 2002 p. 19) and that the hearing of objections imposes significant legal costs on applicants and objectors. The discussion paper concludes that most of the benefits from the current needs test arrangements flow to existing operators of liquor businesses, because restrictions on the number of licensed premises in a given local area help to protect the market share held by existing licensees.

The needs test is relevant to an investigation by the Australian Competition and Consumer Commission (ACCC) into alleged anticompetitive agreements between new and established operators of retail liquor licences to share sections of the New South Wales marketplace. The ACCC investigation

followed complaints that applicants for liquor licences, when faced with significant financial losses from delays while a competitor's objections are waiting to be heard by the Licensing Court, might have agreed to certain restrictions (proposed by that competitor) on their future trading activities. The investigation alleges that the competitor in these cases agreed to withdraw the objection in return for the applicant's agreement to restrict its future trading activities. In some cases, the Court may have included these restrictions as conditions on the applicant's liquor licence.

The ACCC expressed concern that consumers might have faced less choice, less convenience and higher prices for packaged liquor in many local areas (including rural and regional areas) as a result of these alleged agreements. On this matter, one party told the Council that in a rural town of more than 3000 inhabitants, the needs test has entrenched a single licensed outlet charging such high prices that many consumers travel to neighbouring towns to purchase packaged liquor.

In addition to the needs test, licence fees also constitute a significant deterrent to new sellers. The licensing authority sets new licence fees based on factors such as the size and location of the business and the fees paid by other licence holders in the area. The fees vary considerably. In 1998-99, the fee for a new hotel licence varied from A\$25 000 (in regional New South Wales) to A\$175 000 (in Sydney). The fee for a new off-licence also ranged from A\$2500 (in regional New South Wales) to A\$60 000 (in Sydney). Existing licences change hands at similar prices. Licences therefore have an investment component. No annual or periodic licence fee or charge is imposed. The discussion paper noted that the licence fee system requires an overhaul, but recognised that removing the needs test would reduce the value of hotel and off-licences because the entry restriction that arises from the needs test underpins their value (Department of Gaming and Racing, 2002, p. 38).

New South Wales will hold a Summit on Alcohol Abuse in August 2003, replacing the first sitting week of the spring session of Parliament. All members of Parliament have been invited to attend, along with over 100 other delegates. Submissions will be invited from the public. The Government has delayed the consideration of the review until the summit's completion. The review report makes recommendations to refocus the regulatory and licensing regime in line with harm minimisation criteria. The Summit's main focus will be on harm minimisation, so it provides an opportunity to gain an insight into the issues that will reshape liquor regulation in New South Wales.

Assessment

Despite having reported to the Council that it had commenced a review of its liquor licensing legislation in 1998, New South Wales is yet to consider the review report. Its legislation retains significant restrictions on competition for which it has not provided a public benefit justification. The Council thus assesses New South Wales as not having met its CPA obligations in relation to liquor licensing.

Queensland

Queensland regulates the retail liquor industry via the *Liquor Act 1992*. The Act has the key objectives of (1) facilitating the development of the liquor industry given the welfare, needs and interests of the community and the economic implications of change, and (2) regulating the industry to minimise harm from alcohol misuse. Queensland reviewed the Act in 1999. At the time of the review, the legislation contained several restrictions on competition, the most significant being:

- a public needs test, whereby the licensing authority reviewed the services provided by existing sellers, among other considerations, when ruling on applications for new licences (s. 116); and
- a requirement that sellers of packaged liquor to the general public hold a general (hotel) licence, with the hotel licence limited to a maximum of three bottle shops that had to be located within a 5 kilometre radius of the main licence, could not be drive-in facilities and could not have more than 100 square metres of display area.

The review recommended:

- retaining the public needs test to control liquor availability and ensure responsible service;
- retaining the requirement for sellers of packaged liquor to hold a general licence, meaning that they must provide bar, food and other facilities at their main premises;
- relaxing the location and size constraints relating to bottle shops, but not so as to enable 'volume marketing by large liquor barns' in regional areas, which the review considered might create social and economic dislocation; and
- relaxing the limits on the quantity of liquor that members may purchase from licensed clubs.

Following the review, the Queensland Government amended the Liquor Act via the *Liquor Amendment Act 2001*. The amendments:

- replaced the public needs test with a public interest test that focuses on the social, health and community impacts of a licence application rather than the competitive impact on existing licensees;
- relaxed the size and location constraints applying to packaged liquor outlets such that the bottle shop location radius from the main premises is 10 kilometres and the maximum permitted floor area for bottle shops is 150 square metres, in line with review recommendations;

- removed quantity limits on club sales of packaged liquor to members and permitted diners at licensed restaurants to purchase a single bottle of wine for consumption off the restaurant premises.

Queensland retained the requirements that sellers of packaged liquor hold a hotel licence (including the limit on a licence holder to a maximum of three packaged liquor outlets) and provide bar facilities at the site of the hotel licence. Queensland's rationale for retaining these requirements has two main elements:

- the potential harms from alcohol misuse support the concept of a 'specialist provider' model limited to general licence holders; and
- any loss of revenue from packaged liquor sales by country hotels would have adverse effects on their viability to the detriment of the important social role that hotels play in rural areas.

Assessment

The Council indicated in the 2002 NCP assessment that Queensland's decision to require its licensing authority to assess the public interest associated with a new licence, rather than the effect of the new entrant on the viability of existing outlets, is consistent with CPA principles. It considered, however, that the following significant anticompetitive effects arise from Queensland's decision to retain the requirement that only hotel licence holders can operate bottle shops and the associated restrictions on bottle shop location and numbers:

- The hotel licence requirement prevents entry by nonhotel packaged liquor sellers such as specialist packaged liquor bottle barns and prepared food outlets who may wish to sell packaged liquor with meals for home consumption.
- The restrictions have the effect of increasing the demand for hotels relative to the supply, and appear to create a market in hotels/licences similar to that which has developed for taxi plates.
- The decision to allow increased packaged liquor sales by licensed clubs and restaurants appears to be a marginal change at best.
- There is no evidence that nonhotel sellers of packaged liquor are any less responsible than hotel sellers, and there is little evidence that misuse of alcohol is a more significant problem than in Queensland. The Council noted that other jurisdictions typically seek to ensure the responsible selling of alcohol by specifying the qualifications required of licensees (rather than imposing a hotel licence requirement).
- Imposing a State-wide requirement that sellers of packaged liquor hold a hotel licence appears unnecessarily restrictive (particularly in urban

areas) if the objective is to support rural communities by safeguarding the profitability of rural hotels.

- Queensland's hotel licence requirement directs around A\$500 million annually of packaged liquor sales to Queensland hotels which may otherwise might have gone to nonhotel outlets (based on New South Wales evidence cited in Queensland's review).

In its 2003 NCP annual report to the Council, Queensland has responded to the Council's concerns as follows:

- The size restriction might have had a slight effect on the style of detached bottle shops provided (for example, liquor barns), but generally the style reflects planning requirements as well as the market and location that each shop is designed to serve. Although businesses selling prepared food for home consumption are not allowed to sell take-away liquor, the growth in bottle shop numbers is such that most outlets of this nature in urban areas have bottle shops located nearby, often in the same local shopping centre.
- While the restrictions might have had some impact on hotel prices, the analogy with taxi licences is not valid. Queensland has no control on the number and location of hotels other than public interest and planning considerations. Existing hotel licensees and those purchasing existing hotels do not enjoy any advantages over licensees of new hotels in terms of bottle shop licences.
- Not just rural communities that depend on the viability of their hotels; many communities on the outskirts of urban centres also rely on local hotels for much of their social interaction and could be adversely affected by the reform of packaged liquor sales.
- The New South Wales evidence of increasing penetration into the take-away liquor market by nonhotel outlets at the expense of hotel outlets is of limited relevance, because it refers to the type of establishment from which liquor is purchased, not to who owns and operates the outlet(s). Although figures on individual outlet sales are no longer available it is obvious the trend towards increased purchases of packaged liquor from nonhotel outlets applies to Queensland and is not constrained by any lack of access to appropriately located outlets.

While the Council previously accepted Queensland's view that its arrangements help maintain the viability of rural hotels, it notes that the argument is based principally on anecdotal evidence presented to the review. Queensland did not provide any evidence to support its contention that the profitability of urban fringe hotels also depends on their packaged liquor sales. The Council also notes that urban fringe (and rural) hotels are present in jurisdictions that do not restrict the sale of packaged liquor by competitors and that the recent take-up of gaming machines by Queensland hotels could be expected to enhance hotel profitability.

Neither the review nor Queensland's subsequent reporting to the Council established a public interest case for Queensland's restrictions on the size of bottle shops. Other jurisdictions do not limit bottle shop size and do not prohibit drive-in facilities; further, their reviews did not contemplate the introduction of such restrictions. The Council notes that following Victoria's removal of the 8 per cent rule, no jurisdiction other than Queensland has any limit on the number of bottle shops that a licence holder may own.

The Council considers that Queensland's packaged liquor restrictions are significant. They raise the costs of entry into the packaged liquor market for prospective entrants, divert packaged liquor sales to hotels and thereby raise hotel prices, and constrain competition among bottle shops. There is no evidence that the restrictions contribute to harm minimisation. The Council thus assesses Queensland as not complying with its CPA obligations in relation to liquor licensing.

Western Australia

Western Australia's *Liquor Licensing Act 1988* contains two significant competition restrictions.

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

Western Australia's review reported in March 2001. The review made the following recommendations in relation to the above restrictions:

- The granting of a licence should depend on the licensing authority being satisfied that the licence is in the public interest. The review stated that the licensing authority, in determining the public interest, may consider (but not be limited to) the likely effect on competition in the retail market or in a particular area where relevant to a matter such as propensity for harm, but that the authority should not consider the impact of competition on individual competitors.
- Sunday trading hours for hotels and liquor stores should be the same with both types of outlet permitted to trade on Sundays between 10 am and 10 pm.

The Western Australian Government released the review report as a draft for public comment. Following the 2002 NCP assessment, the Premier advised the Council that the Government appreciates the need for reform and would take steps to progress this reform during 2002-03 via a further review of liquor licensing arrangements.

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

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

Assessment

Western Australia's proposed reforms are based on its NCP review recommendations and focus on harm minimisation while enabling consumers to benefit from competition. The measures also address the current regulatory discrimination between different types of on-premises and packaged liquor outlet in Western Australia's legislation. However, Western Australia has not provided a public benefit justification for deferring the reforms until 2005. The Council thus retains its assessment of June 2002, that Western Australia has not met its CPA clause 5 obligations in relation to liquor licensing, stands.

South Australia

South Australia completed its NCP review of liquor licensing in 1996 and removed a number of restrictions in 1997. It retained, however, the proof-of-need test and the requirement that packaged liquor can be sold only from premises exclusively devoted to the sale of liquor. The review recommended retaining these provisions and conducting a further review after three or four years, when evidence of outcomes in less regulated jurisdictions would be available.

The Council raised the proof-of-need test with the former South Australian Government in the 1999 NCP assessment. It noted that the main effect of the test is to restrict entry by new sellers rather than to directly address harm minimisation. In line with the review recommendation for a further examination of liquor licensing arrangements in three to four years, the then South Australian Government undertook to reconsider the needs criterion in late 2000 or early 2001. The Council considered that this undertaking satisfied 1999 NCP obligations but the Government did not conduct the review within the indicated time.

The Council raised the matter of a further review with the current South Australian Government during the 2002 NCP assessment. The Government subsequently wrote to the Council to confirm that it would review the State's liquor licensing legislation, with the objective of completing the review and appropriate reform activity by June 2003. A team drawn from the Attorney-General's department is conducting review against terms of reference that reflect the CPA clause 5. It published an issues paper in November 2002, invited submissions and published a draft report in April 2003.

The draft report found that the requirement that packaged liquor be sold only from premises exclusively devoted to the sale of liquor has been interpreted by the licensing authority as a requirement of dedicated premises which may be under the same roof as a larger retailing business, such as a supermarket. The restriction is therefore similar to that applying in several other jurisdictions. The draft report found that such a restriction would impose only minor costs and has some harm minimisation benefits, such as ensuring alcohol is not accessible to minors and is differentiated from other products. It recommended that the provision be retained. The draft report described the needs test arrangements as a serious competition restriction that cannot be justified by public benefits and should be abolished.

Assessment

The Council supports the findings of the draft review report on both the outstanding issues. However, because South Australia has not completed its review and reform activity, it has not complied with its CPA clause 5 obligations in relation to liquor licensing.

Tasmania

At the completion of the 2002 NCP assessment, Tasmania's legislation contained two significant restrictions on competition:

- the '9 litre rule' which prevented nonhotel sellers of packaged liquor from selling liquor in quantities less than 9 litres in any one sale (except for Tasmanian wine, which may be sold in any quantity); and
- a prohibition on the grant of a liquor licence in connection with the activities of a supermarket, meaning that although supermarket operators can hold licences, they cannot sell packaged liquor from their supermarket premises.

In March 2001, the review group released an issues paper that identified these two provisions as significant competition restrictions. The final report of the review was completed in December 2002 after lengthy consultation and recommended removal of the 9 litre minimum purchase requirement for off-

licences which the review considered did not contribute to achieving the Act's harm minimisation objective.

In relation to the restriction on supermarkets, the Review Group, which was independent and undertook a rigorous investigation, found that there was effectively no net benefit in permitting supermarkets to sell packaged liquor. The review found that the adverse economic impacts (including a loss of employment) would be matched by the anticipated customer convenience and price benefits. However, consistent with the guiding principle in Clause 5 of the CPA, the Review Group recommended that the restriction be removed.

The Government considered the final review report and introduced amending legislation in the Budget sittings of 2003. Several amendments relate to regulatory design or enhance harm minimisation measures in the Act. The Government also removed a number of competition restrictions that it considered to have no net public benefit, including the 9 litre rule.

The Government rejected, however, the review recommendation to remove the restriction on supermarket sales. The Government's reasons for this decision are set out in a separate report to the Council (Government of Tasmania 2003b). The Government considered that the review might have underestimated the costs and overestimated the benefits of allowing supermarket sales of packaged liquor.

The Government noted that Tasmania already has the second largest number of packaged liquor outlets per head in Australia and that additional supermarket outlets would place Tasmania ahead of other jurisdictions. It also noted that three significant church and welfare agencies did not make a submission to the review. When the Government wrote to these organisations, seeking their views on the reforms proposed by the review, they expressed concern about increased access to alcohol, maintaining that it would have a major adverse impact on community welfare. The Government accepted the views of these organisations and concluded that permitting supermarkets to sell liquor would create the potential for significant economic, health and social costs.

The Government also concluded that the convenience benefit from removing the restriction on supermarket sales would be unlikely to be as significant as estimated by the review, because most shopping centres have bottle shops in close proximity.

Assessment

The Government's position is based on a perceived strong positive relationship between the number of liquor outlets, the consumption of alcohol and alcohol-related harm. The review, however, cited persuasive evidence that supermarket sales of liquor present no greater threat to safety than posed by sales from other licensed outlets (Liquor and Accommodation Review Group 2002, p. 10). The question is whether requiring supermarket sales to be made from separate premises is in the public interest.

The requirement raises the costs of liquor retailing for supermarket operators who must acquire separate premises and results in a small loss of consumer convenience. However, evidence provided to the review suggests that very little price benefit would occur if the restriction were removed. For example, the largest supermarket chain in Tasmania already owns a chain of liquor outlets and competes aggressively with other liquor retailers. Further, the removal of the nine-litre limit is likely to increase competition in the packaged liquor market. The costs to consumers of the restriction therefore appear relatively low.

On the other hand, the separate premises requirement may have some minor harm minimisation benefits, such as differentiating alcohol from other supermarket products and making its purchase by minors more difficult.

The Council therefore assesses Tasmania as complying with its CPA clause 5 obligations in relation to liquor licensing.

The Northern Territory

The Northern Territory's *Liquor Act* and Liquor Regulations contain a public needs test that requires the licensing authority, when determining applications for a new licence, to consider whether existing sellers could meet consumer needs. In addition, there is discrimination between hotels and liquor stores, whereby liquor stores are prohibited from trading on Sundays while hotels may open from 10 am to 10 pm on Sundays.

In April 2003, the Government announced the development of a broad alcohol framework to address antisocial behaviour associated with liquor. The issue of 'Sunday take-away trading' is to be specifically considered in this broader exercise.

The review report of the Liquor Act has been finalised and the Government is expected to consider the report in 2003.

Assessment

An issue of particular significance for the Northern Territory is the restriction of liquor sales in locations where alcohol has created stresses in the community. The Council considers that a licensing test that focuses on public interest factors such as harm minimisation and community amenity (without references to outlet density or competitive effects on incumbents), and that does not discriminate between sellers of similar products, would be consistent with NCP principles.

The Council assesses the Northern Territory as not having complied with its CPA obligations in relation to liquor licensing because it has not completed its review and reform activity.

Table 7.3: Review and reform of legislation regulating liquor licensing

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
New South Wales	<i>Registered Clubs Act 1976</i> <i>Liquor Act 1982</i>	Public needs test which allows objections to the granting of a new licence on the grounds that existing facilities are meeting the public need; high fees for a new licence or the transfer of an existing licence, which restrict entry by new sellers	Review is complete and the Government will consider its response following the completion of the alcohol summit in August 2003.		Review and reform incomplete
Victoria	<i>Liquor Control Act 1987</i> <i>Liquor Control Reform Act 1998</i>	Needs test and the 8 per cent rule, under which no liquor licensee could own more than 8 per cent of general or packaged liquor licences	Initial review was completed in 1998. A further review of the 8 per cent rule reported to the Government in June 2000.	Several pro-competition changes (including removal of the needs test) were completed in response to the initial review via the Liquor Control Reform Act. The Government commenced a gradual phase-out of the 8 per cent cap and introduced a package of measures to assist the competitiveness of independent liquor stores. The cap is being raised progressively and will be removed from the start of 2006	Meets CPA obligations (June 2001)

(continued)

Table 7.3 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Queensland	<i>Liquor Act 1992</i>	Public needs test (whereby licensing authorities can consider the capacity of existing facilities in determining the public need for a new licence); provision for only hotel licensees to sell packaged liquor to the public; limit on the number of bottle shops that any one hotel can establish; restrictions on the size and configuration of bottle shops	Review was completed in 1999 and endorsed by Cabinet in February 2000. Review recommended retaining key restrictions and removing some other restrictions.	<i>Liquor Amendment Act 2001</i> replaced the public needs test with a public interest test that examines the social, health, and community impacts of licensing proposals. The Act also retains the hotel monopoly on the sale of packaged liquor to the public and the restrictions on the ownership, location and configuration of bottle shops. The Council does not consider that there is a net public benefit from these restrictions.	Does not meet CPA obligations (June 2003)

(continued)

Table 7.3 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Western Australia	<i>Liquor Licensing Act 1988</i> and Regulations	Public needs test, which allows licensing authorities to consider the capacity of existing facilities in determining the public need for a new licence; prohibition on liquor stores, unlike hotels, from trading on Sunday.	<p>Review reported in March 2001 and recommended that:</p> <ul style="list-style-type: none"> the granting of a licence depend on the licensing authority being satisfied that the licence is in the public interest, which should not involve a consideration of the competitive impact of a new licence on existing competitors; and introducing identical Sunday trading hours for hotels and liquor stores. <p>Western Australia released the review report as a draft for public comment.</p>	Western Australia introduced a package of measures (to take effect from 1 July 2005) that will implement the major review recommendations. Western Australia is replacing the public needs test with a public interest test and permitting the same opening hours for outlets engaged in similar activities. No public benefit case has been made to support the deferral of reform.	Does not meet CPA obligations (June 2003)

(continued)

Table 7.3 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
South Australia	<i>Liquor Licensing Act 1997</i> (retaining certain restrictions from the earlier <i>Liquor Licensing Act 1985</i>)	Proof-of-need test requiring licence applicants to demonstrate that a consumer need exists for the grant of a licence; the requirement that only hotels and retail liquor stores devoted to the sale of liquor exclusively may sell liquor.	Review was completed in 1996 and changes were implemented in 1997. A further review of remaining restrictions is nearing completion. A draft review report was published for public comment in April 2003.		Review and reform incomplete
Tasmania	<i>Liquor and Accommodation Act 1990</i>	The 9 litre rule which prevents nonhotel sellers of packaged liquor from selling liquor (except for Tasmanian wine) in quantities less than 9 litres in any one sale; prohibition on supermarkets selling packaged liquor from their supermarket premises	Review was completed in December 2003. It recommended removing the nine litre rule and the prohibition on sales of packaged liquor from supermarket premises, and reforming other minor restrictions.	The Government has implemented reforms, including removing the 9 litre rule but retained the ban on supermarket sales. It considered that the review's cost-benefit analysis underestimated the costs of reform and overestimated its benefits.	Meets CPA obligations (June 2003)
ACT	<i>Liquor Act 1975</i> (except ss 41E[2] and 42E[4])	Licensing of sellers	Review was completed in 2001. The restrictions contained in the Act were found to be in the public interest.	Minor amendments were made to the Act	Meets CPA obligations (June 2002)
Northern Territory	<i>Liquor Act</i>	Public needs test which allows licensing authorities to consider the capacity of existing facilities in determining the public need for a new licence	A draft final review report was prepared. The Government is still considering the report.		Review and reform incomplete

Petrol retailing

Review and reform activity

In the 2002 NCP assessment, the Council assessed the ACT as having complied with its CPA obligations in relation to its legislation that allows the Minister to regulate retail fuel prices. Western Australia and South Australia also have legislation that restricts competition in petrol retailing, and their review and reform progress is outlined below. Table 7.4 summarises jurisdictions' progress in reviewing and reforming legislation that regulates petrol retailing.

Western Australia

In recent years, Western Australia has introduced fuel pricing measures, primarily through the *Petroleum Products Pricing Amendment Act 2000* and the *Petroleum Legislation Amendment Act 2001*, including:

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

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

In addition, Western Australia introduced higher fuel standards from January 2001 via the Environmental Protection (Diesel and Petrol) Regulations 1999. The specifications for unleaded petrol are not matched by any other State or Territory, although national unleaded petrol standards will align with the Western Australian specifications in 2006. The Regulations have the potential to reduce competition by making it more difficult to import fuel into Western Australia, leaving the only refinery in Western Australia as a virtual monopolist at the wholesale level. The regulations do not appear to have been the subject of a regulatory impact statement.

In its 2002 NCP assessment, the Council noted an ACCC report on fuel price variability (ACCC 2001b). The ACCC found that industry participants (including oil majors, independents, industry organisations, consumer organisations and governments other than the Government of Western Australia) do not support the arrangements in Western Australia. It also found that the State's legislation had no consistent impact on prices.

A subsequent report on Western Australia's fuel price arrangements contained the following findings (ACCC 2002b).

- The 24 hour rule is likely to have reduced rather than increased competition because it adversely affects independent operators who tend to use price as their main tool for achieving competitive advantage. The 24 hour rule diminishes the ability of independents to respond quickly to competitors.
- The maximum wholesale price arrangements have not been working as intended, with only one sale recorded at the time of the report's publication. The ACCC found it likely that the arrangements had had a negative effect on competition at the wholesale level by reducing supply available to the spot market.
- Perth fuel prices had increased relative to three benchmarks, (Sydney and Melbourne prices, the ACCC's import parity indicator and Western Australian maximum wholesale prices). The average Perth price exceeded average Melbourne and Sydney prices by approximately 3.5 cents per litre. While the ACCC conceded that a significant part of this increase could be attributable to the higher fuel standards, it considered that some of the increase might have been due to the impact of the 24 hour rule and the reduction in import competition accompanying the higher fuel standards.
- A comparison of the characteristics of price cycles in periods before and after the introduction of the new arrangements suggested the 24 hour rule has a minimal effect on the variation and duration of price cycles in Perth.
- The city-country price differential had increased rather than decreased according to a comparison of the 21 months after the introduction of the new arrangements with the 21 months before to January 2001.

The ACCC considered that it was hard to conclude that the Western Australian fuel pricing arrangements have been successful to date and that a number of the measures might have been introduced quickly, without full consideration of their implications or the necessary administrative details for their successful implementation. It noted that the combination of fuel price regulations and tighter fuel standards is likely to exert an adverse influence on oil company investment in Western Australia.

In its 2003 NCP annual report, Western Australia has responded to the ACCC's comments as follows.

- Data for the periods following the ACCC's data period (July–September 2002) show Perth prices have been far more competitive. The average Perth price is now around 1 cent per litre more than the average Sydney price and approximately 2.5 cents per litre more than the average Melbourne price. The 'Cheapest 100' sites in Perth now consistently offer lower prices than the Melbourne or Sydney averages, notwithstanding the fact that Western Australian motorists pay a premium of around 1.6 cents per litre for fuel that meets the State's higher fuel standards.
- In response to the ACCC finding that previous terminal gate pricing arrangements in Western Australia had not worked as intended, the Western Australian Government introduced new terminal gate pricing arrangements, which commenced on 19 December 2002. These are less prescriptive than the previous arrangements and apply to all seaboard terminals across Western Australia. Closely modelled on the Victorian Terminal Gate Pricing arrangements. The arrangements were introduced to increase price transparency in the wholesale fuel market and provide access to petroleum products directly from the terminal at competitive maximum wholesale price for eligible distributors and retailers. These objectives are identical to those of the Victorian model. The ACCC commented in its report that the Victorian arrangements had increased price transparency because terminal gate prices were available on oil company web sites. Western Australia noted that the ACCC made no such comment on Western Australia's arrangements, although terminal gate prices had been available on the FuelWatch website for over 18 months,
- The fuel specifications in Western Australian may not be as restrictive as originally thought. A refiner/marketer has imported several cargoes of unleaded petrol from one of its Australian refineries and has imported fuel from an aligned Asian refinery over the past 12 months at very competitive prices. The refiner/marketer is understood to be providing most of its own unleaded petrol needs, as well as supplying some product to other refiner/marketers, via importation.
- In a recent survey undertaken by the Royal Automobile Club, the majority of respondents (both members and nonmembers) indicated they were willing to pay up to an extra 2 cents per litre for "cleaner" fuel. Given that the rest of Australia will align with Western Australia in just over two years, a significantly higher quality fuel, at a cost Western Australian motorists have indicated that they are willing to pay is considered to be in the public interest.

Assessment

The Council is confronted with conflicting views concerning the public benefits resulting from restrictions contained in Western Australia's fuel pricing legislation. The review of this legislation found that the restrictions were in the public interest. Reports by the ACCC disputed the price benefits resulting from the restrictions and drew attention to their adverse impacts on competition. Further research undertaken by the Western Australian

Government, using more recent data, concluded that its fuel pricing arrangements were reducing prices and promoting competition. The Council considers that the extent of the price and other benefits flowing from the restrictions is ambiguous, with price outcomes appearing to depend on the measurement time period. The Council is also concerned about the absence of support for the restrictions by industry stakeholders. Because Western Australia has retained its fuel price restrictions without being able to clearly demonstrate that they provide a public benefit, the Council assesses the state as not having met its CPA clause 5 obligations in relation to this legislation.

The ACCC considered that Western Australia's fuel standards have the potential to reduce competition for the State's only refinery. Western Australia did not supply a public benefit argument to support its standards. While the Royal Automobile Club survey indicated that motorists are willing in theory to pay the premium, the restriction deprives them of any choice (at least until 2006). The Council assesses Western Australia as not having complied with its CPA clause 5 obligations in relation to fuel standards.

South Australia

South Australia's *Petrol Products Regulation Act 1995* allows the relevant Minister to withhold new retail petroleum licences if the new licence holder would provide 'unfair and unreasonable competition' to sellers in the area immediately surrounding the proposed new outlet. South Australia completed a review of the Act in 2001, finding that the Act created a barrier to entry and protected industry participants without providing a net public benefit.

The Government accepted the findings of the review and is drafting legislation giving effect to the recommendations. The Government intends to phase out the current restrictions by June 2004. The phasing of reform provides industry participants with time to adjust their business plans for the removal of the entry restriction, which will occur at a time already of rapid change in the industry.

Assessment

The Council accepts the need for a phased reform, but notes that South Australia had not passed legislation to effect the commencement of the foreshadowed reforms. The Council thus assesses South Australia as not having complied with its CPA Clause 5 obligations in relation to petrol retailing.

Table 7.4: Review and reform of legislation regulating petrol retailing

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Western Australia	<i>Petroleum Products Pricing Amendment Act 2000</i>	Requirement that retailers fix their prices for at least 24 hours and notify these prices for publication on its FuelWatch web site; maximum wholesale price arrangements; the right of a retailer to purchase 50 per cent of petroleum products from a supplier other than the primary supplier; mandatory price boards to be displayed in all regional centres	Review of this Act and the <i>Petroleum Legislation Amendment Act 2001</i> was completed in 2001. Restrictions were found to be in the public interest. ACCC reports found, however, that the restrictions might have reduced competition, increased the rural/urban price differential and raised prices.		Does not meet CPA obligations (June 2003)
	<i>Petroleum Legislation Amendment Act 2001</i>	Requirement that retailers fix their prices for at least 24 hours and notify these prices for publication on its FuelWatch web site; maximum wholesale price arrangements; the right of a retailer to purchase 50 per cent of petroleum products from a supplier other than the primary supplier; mandatory price boards to be displayed in all regional centres	Review of this Act and the <i>Petroleum Legislation Amendment Act 2001</i> was completed in 2001. Restrictions were found to be in the public interest. ACCC reports found, however, that the restrictions might have reduced competition, increased the rural/urban price differential and raised prices.		Does not meet CPA obligations (June 2003)
	Environmental Protection (Diesel and Petrol Regulations) 1999.	Setting of fuel standards above national standards, thus protecting the local refinery			Does not meet CPA obligations (June 2003)

(continued)

Table 7.4 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
South Australia	<i>Petrol Products Regulation Act 1995</i>	Retail petroleum licences may be withheld if they provide 'unfair and unreasonable competition' to sellers in the area immediately surrounding the proposed new outlet	Review was completed in mid-2001. It found that the Act created a barrier to entry that protected industry participants without providing a net public benefit.	The Government is drafting legislation to phase out the current restrictions by June 2004. The phasing of reform provides an adjustment time for industry participants.	Review and reform incomplete
ACT	<i>Fair Trading (Fuel Prices) Act 1993</i>	Provision for the Government to impose price controls on fuels in certain circumstances	Intradepartmental review recommended retaining restrictions on public interest grounds. It argued that provisions would be exercised only at times of widespread anticompetitive behaviour.	Restrictive provisions were retained.	Meets CPA obligations (June 2001)
	<i>Fair Trading (Petroleum Retail Marketing) Act 1995</i>		Review was completed.	Act was repealed.	Meets CPA obligations (June 2001)

