13 Queensland

A3 Fisheries

Fisheries Act 1994

In the 2003 National Competition Policy (NCP) assessment, the National Competition Council concluded that Queensland had reviewed the Fisheries Act, and implemented some of the reforms recommended by the review. The key outstanding matters were:

- fishery licensing — the review recommended replacing the variety of vessel and occupational licences with a single fishery access licence
- fishery management costs — the review recommended increasing the recovery of fishery management costs from fishers and reducing cross-subsidies between fishers
- quota trading controls (a minimum quota holding and the prior approval of quota transfers) in the spanner crab fishery — the review recommended removing these controls.

Queensland has made further progress since the 2003 assessment. In October 2003 it removed minimum quota holdings from the Spanner Crab Management Plan. In September 2004 the Queensland Parliament passed the Primary Industries and Fisheries Legislation Amendment Act 2004, which amongst other things removed the requirement for prior approval by the Chief Executive of the Department of Primary Industries and Fisheries for quota transfers in all fisheries (including the spanner crab fishery).

The Government is considering proposals to address the other outstanding matters — fishery licensing and the recovery of fishery management costs.

The Council assesses that Queensland is yet to complete its Competition Principles Agreement (CPA) clause 5 obligations arising from the Fisheries Act. The state will have met these obligations when it has:

- introduced a single fishery access licence to replace the existing variety of vessel and occupational licences
- begun to increase the recovery of fishery management costs from fishers.

A4 Forestry

Sawmills Licensing Act 1936

Under the Sawmills Licensing Act, Queensland prohibits the operation of a sawmill without a licence. The Act provides the chief executive of the Department of Primary Industries with absolute discretion over the issue of licences and the conditions attached to them. Generally, licences require operators to keep records and return information to the chief executive.

A review of the Act was completed in December 2000, recommending its repeal. In September 2004 the Queensland Parliament passed the Primary Industries and Fisheries Legislation Amendment Act 2004, which amongst other things provided for the repeal of the Sawmills Licensing Act on 1 January 2005.

The Council assesses that Queensland has met its CPA obligations related to the Sawmills Licensing Act.

A5 Agricultural and veterinary chemicals

Agricultural and Veterinary Chemicals (Queensland) Act 1994

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

The Australian Government Acts were subject to a national review (see chapter 19). Because the Australian Government has not completed reform of the national code, the reform of state and territory legislation that automatically adopts the code has not been completed. The Council thus assesses that Queensland has not yet met its CPA obligations in relation to this legislation.

Agricultural Chemicals Distribution Control Act 1966

Beyond the point of sale, agricultural and veterinary chemicals are regulated by 'control of use' legislation. This legislation typically covers the licensing of chemical spraying contractors, aerial spraying and uses other than those for which a product is registered (that is, off-label uses).

Queensland was one of four jurisdictions that participated in the national review of agvet chemicals 'control of use' legislation (see chapter 19). Queensland amended its Agricultural Chemicals Distribution Control Act and *Chemical Usage (Agricultural and Veterinary) Control Act 1988* to implement all relevant NCP reforms within the state's area of responsibility. In December 2003 further amendments to Queensland's legislation (to cater for low regulatory risk chemicals) came into effect, in conjunction with amendments to the national Agricultural and Veterinary Chemicals Code.

Queensland has completed review and reform of this legislation as far as possible. The Council thus assesses Queensland as having complied with its CPA obligations in this area, while noting that the report of a national working party examining licensing conditions for aerial spraying businesses may require further change.

B1 Taxis and hire cars

Transport Operations (Passenger Transport) Act 1994

Queensland's Transport Operations (Passenger Transport) Act limits the number of taxi and hire car licences, enabling Queensland Transport to determine the number that it considers are necessary in each 'taxi service area'. The department considers a range of factors, including population data, community perceptions of service standards, waiting times and kilometres travelled per taxi.

Queensland released its NCP review of the Act in September 2000. The review recommended that the government retain the existing arrangements for issuing taxi and hire car licences, arguing that easing supply constraints would increase travel costs and reduce the supply of wheelchair accessible taxis. The Council found in its 2002 NCP assessment that the review report did not provide a strong public benefit case for its recommendation to restrict taxi numbers, and noted that the review assumptions and method were unclear. The government did not make any significant changes to taxi and hire car arrangements over the following 12 months, and the Council concluded in the 2003 NCP assessment that Queensland's approach to taxi reform was inconsistent with the four broad principles of reform that the Council circulated to jurisdictions in 2002 (see chapter 9).

The Queensland Premier and the Transport Minister stated in a media release on 31 August 2003 (after the Council had completed the 2003 NCP

assessment) that the government would 'maintain our regulated taxi industry' (Beattie 2003). In its 2004 annual report to the Council, the Queensland Government stated that it will regularly release new taxi licences in taxi service areas in response to performance criteria related to waiting time. Using these criteria, Queensland Transport approved the release of 130 new taxi licences for the 27-month period from August 2003. This is equivalent to a 4.5 per cent increase in taxi numbers over this period, and includes 100 wheelchair accessible taxi licences in Brisbane. On 30 May 2004 the Minister for Transport and Main Roads launched a discussion paper, which proposed that the government continue to issue taxi licences and set the minimum number of licences in a taxi service area by reference to waiting time performance.

The government has not changed its arrangements for the release of taxi and hire plates. These arrangements lead to only a small number of additional plates being released after ad hoc reviews of different geographic areas. The government plans to introduce a formulaic approach to reviewing and potentially increasing taxi numbers after November 2005. The approach will take into account data on population, ageing, waiting times, average number of jobs per taxi, seasonal peaks and availability of other public transport. Queensland Transport aims to have the formula developed by late 2004. It is not clear whether the formulaic approach will lead to any significant change in taxi and hire car supply outcomes.

The Council thus concludes that Queensland remains noncompliant with its CPA obligations.

B4 Rail

Transport Infrastructure Act 1994
Transport Infrastructure (Rail) Regulation 1996

Queensland undertook a public benefit test of those rail safety provisions of the Transport Infrastructure Act and the related Regulation that could impede competition. Queensland Transport completed the review report in March 2003 after consulting the rail industry and relevant government agencies, and referring to the recommendations of the New South Wales inquiry into the Glenbrook rail accident. The Queensland report concluded that net benefits arise from the safety accreditation system that applies to rail managers and operators. The Queensland Government introduced safety provision amendments to Parliament in the Transport Infrastructure and Another Act Amendment Bill 2003 on 3 June 2003. When the Council finalised the 2003 NCP assessment, this Bill was still in Parliament and the Council thus found that reform was incomplete. Parliament passed and enacted this legislation later in 2003, with only minor technical amendments.

The Council considers that Queensland has met its CPA clause 5 obligations in relation to rail legislation.

B6 Ports and sea freight

Transport Infrastructure Act 1994
Transport Infrastructure (Ports) Regulation 1994

In the 2002 NCP assessment, the Council found that Queensland's review and reform activity did not meet its CPA obligations because it had not amended provisions of the Transport Infrastructure Act that potentially restrict significant port activities to authorised ports, the limits of which are defined in the Transport Infrastructure (Ports) Regulation 1994.

Following discussions with the Queensland Government, the Council understands that the government's primary objective is to ensure it can prevent the development of a new port if existing ports have excess capacity. This objective partly reflects concerns about the environmental impacts of new ports in terms of pollution, destruction of habitat and potential damage to the Great Barrier Reef. The review found that other Queensland (and Australian Government) statutes provide for constraints on various port activities, including controls over infrastructure and land development, and over activities affecting maritime safety and the environment. The review concluded that these statutes do not provide a holistic approach to government objectives in the areas of development, environment and safety, but probably allow the government to achieve its objectives. Several of these Acts were included in Queensland's legislation review schedule, and the Council has assessed these as meeting CPA obligations.

The Council is concerned that Queensland's review of the Transport Infrastructure Act provisions relating to port activities adopted a 'reverse onus of proof'. Rather than applying the CPA clause 5 guiding principle that legislation should not restrict competition unless (1) the benefits of the restriction outweigh the costs and (2) the objectives of the legislation can only be achieved by restricting competition, Queensland's review adopted the position that competitive reforms should be introduced only if they can be demonstrated to yield a net benefit. However, the Council notes that other Acts containing provisions with a similar overall effect on competition have been assessed as compliant with the CPA.

The Council thus concludes that Queensland has met its obligations in relation to the Transport Infrastructure Act.

C1 Health professions

Chiropractors and Osteopaths Act 1979
Chiropractors Registration Act 2001

The Council's 2003 NCP assessment considered that Queensland's outstanding reform obligation relating to the regulation of chiropractors was to implement a core practices review recommendation to reserve only thrust manipulation of the spine to chiropractors, medical practitioners, osteopaths, and physiotherapists. The Queensland Treasurer endorsed the review recommendations and introduced a Bill to implement these reforms in June 2003. The reforms had not been passed at the time of the 2003 NCP assessment, so the Council assessed the state's progress in review and reform of chiropractic legislation as incomplete.

The subsequent passage of the *Health Legislation Amendment Act 2003* implements core practice reforms. The Council thus assesses Queensland as having met its CPA obligations in relation to chiropractors.

Dental Act 1971
Dental Practitioners Registration Act 2001
Dental Technicians and Dental Prosthetists Act 1991
Dental Technicians and Dental Prosthetists Registration Act 2001

The Council's 2003 NCP assessment considered that Queensland's outstanding obligations in relation to the regulation of the dental profession were to implement core practice reforms and remove specific commercial restrictions. While the government accepted these reforms, the amending legislation had not been passed at the time of the 2003 NCP assessment. The Council thus assessed the state's progress in the review and reform of dental practitioner legislation as incomplete.

Queensland implemented outstanding reforms to dental professional legislation through the *Health Legislation Amendment Act 2003*. In particular, the Act implements review recommendations to allow dental hygienists and therapists to perform tasks that were once reserved for dentists.

The Council thus assesses that Queensland has met its CPA obligations in relation to its dental practitioner legislation.

Medical Act 1939
Medical Practitioners Registration Act 2001

The Council's 2003 NCP assessment considered that the outstanding NCP issue in relation to the medical profession was the practice restrictions that apply to surgery of the muscles, tendons, ligaments and bones of the foot and

ankle. Following a meeting between Queensland officials and members of the Council secretariat on 29 July 2004, however, the Council was advised that there was no such restriction in the original medical legislation and that the Health Legislation Amendment Act did not include the introduction of such a restriction.

The Council thus assesses Queensland as having complied with its CPA obligations in relation to the medical profession.

Nursing Act 1992

The Queensland review of the Nursing Act recommended, among other things, retaining practice restrictions for nurses and midwifes, but refining them to:

- allow persons without nursing (midwifery) authorisation to practise under the supervision of a nurse (midwife)

- recognise the role of other health professionals that provide services, within their professional training and expertise, that may be regarded as nursing (midwifery) type services.

The Council's 2003 NCP assessment considered that the proposed reforms were consistent with the CPA guiding principle. However, the Council assessed Queensland as not meeting its CPA obligations in relation to the nursing and midwifery professions because it had not yet implemented the reforms.

The Health Legislation Amendment Bill 2004 which implements the outcomes of the review of the Nursing Act was introduced to Parliament on 19 October 2004. The proposed amendments, among other things, will:

- retain a statutory restriction on nursing practice but provide exemptions for non-nursing staff under the supervision of a nurse and other health professionals providing services within their professional training

- retain a statutory restriction on caring for a woman in childbirth but provide exemptions to ensure a woman in childbirth has access to other appropriate professional health care.

The Council considers that the proposed amendments are consistent with the state's NCP obligations. However, as the amendments have not yet been passed, the Council confirms its 2003 NCP assessment that Queensland has not yet met its CPA obligations in this area.

Optometrists Act 1974
Optometrists Registration Act 2001

The Council's 2003 NCP assessment considered that the outstanding NCP issue in relation to the optometry profession was the restriction on the fitting of contact lenses. Following a meeting between Queensland officials and members of the Council secretariat on 29 July 2004, however, the Council is satisfied that the introduction of the Health Legislation Amendment Act, which implements core practice reforms, resolves this issue.

The Council thus assesses that Queensland has met its CPA obligations in relation to the optometry profession.

Pharmacy Act 1976
Pharmacists Registration Act 2001

The Queensland Government in April 2004 circulated proposed amendments to the Pharmacists Registration Act for comment. These amendments were developed in response to Council of Australian Governments (CoAG) national process recommendations for pharmacy regulation reform (see chapter 19). If passed, they would have complied with desired CoAG outcomes in that they would have provided for:

- the removal of restrictions on the number of pharmacy businesses that a pharmacist may own

- the removal of restrictions that apply to friendly society businesses but not to other proprietors of pharmacy businesses.

On 12 August 2004, Queensland received correspondence from the Prime Minister which advised that provided Queensland, as a minimum, relaxes ownership restrictions to allow pharmacists to own up to five pharmacies each and permit friendly societies to own up to six pharmacies each, it would not attract competition payment penalties.

These reforms fall short of those required by CoAG national review processes. While the number of pharmacies that a pharmacist can own under the Act would increase from four to five, CoAG outcomes require that such restrictions be removed. They also increase restrictions on competition in certain respects, rather than removing them, by restricting friendly societies to owning six pharmacies. Previously, no such cap applied and it was open for friendly societies to apply to the Minister to permit the establishment of a new friendly society pharmacy.

Nonetheless, these amendments, in conjunction with other pharmacy reforms, are included in the Health Legislation Amendment Bill 2004 which was introduced into Parliament on 19 October 2004.

As the proposed reforms fall short of reforms recommended by CoAG national processes, the Council assesses Queensland as not yet having met its review and reform obligations in relation to pharmacy.

Physiotherapists Act 1964
Physiotherapists Registration Act 2001

The Physiotherapists Registration Act replaced the Physiotherapists Act but retained broad practice restrictions. The Health Legislation Amendment Bill 2003 proposed to remove these broad practice restrictions by reserving only the core practice of thrust manipulation of the spine for physiotherapists and other related health professions. In the 2003 NCP assessment, the Council considered that the Health Legislation Amendment Bill 2003 was consistent with the CPA guiding principle. However, it assessed Queensland as not complying with its review and reform obligations because Parliament had not passed the Bill.

The Health Legislation Amendment Act implements these reforms. The Council thus assesses that Queensland has met its CPA obligations in relation to physiotherapists.

Podiatrists Act 1969
Podiatrists Registration Act 2001

The Council's 2003 NCP assessment considered that Queensland had not met its NCP obligation in relation to podiatry because it had yet to remove the outstanding restriction on the practice of soft tissue and nail surgery of the foot. For the 2004 NCP assessment, the state has advised that no such restriction existed, noting that the Podiatrists Registration Act contained a general restriction on the practice of podiatry that the Health Legislation Amendment Act removed.

The Council thus assesses that Queensland has met its CPA obligations in relation to this legislation.

Occupational Therapists Act 1979
Occupational Therapists Registration Act 2001

The key restriction in the Occupational Therapists Registration Act relating to occupational therapists is title protection, which the Council assessed in its 2002 and 2003 NCP assessments as noncompliant. Title protection can restrict competition between occupational therapists and other practitioners who provide similar services, by making it difficult for these other practitioners to describe their services in ways that are meaningful to potential consumers. In addition, the fees required of registration applicants restrict entry to the profession of occupational therapy and potentially weakens competition among occupational therapists.

In its 2004 NCP annual report, Queensland advised that it does not intend to amend the Act to remove the title restriction. It considers that title restriction is a basic consumer protection measure that:

- protects consumers from the risk of being harmed by inadequately trained or incompetent providers, by ensuring registered providers are competent and subject to a complaints/disciplinary process

- assures consumers that registered occupational therapists, having satisfied registration requirements, are appropriately trained and fit to practise safely and competently.

Without a robust public interest case, the Council does not accept the state's consumer protection rationale. There does not appear to be an increased risk of harm to patients in jurisdictions that do not regulate occupational therapists. To protect patients, New South Wales, Victoria, Tasmania and the ACT rely on self-regulation supplemented by general mechanisms such as the common law, the *Trade Practices Act 1974* and independent health complaints bodies. In addition, many occupational therapists are employed in the public sector — facilities that are well placed to assess the competency of the staff they employ — and consumers are unlikely to seek occupational therapy services without a referral from another health provider. Both these factors reduce information asymmetry risks for the consumer.

While the Council considers that title protection restricts competition, it notes that the costs of retaining this restriction are not significant because nonregistrants can still use unrestricted titles. Nonetheless, it confirms its 2002 assessment that Queensland, by not removing title protection restrictions, has not complied with its CPA obligations to review and reform regulations affecting this profession.

Speech Pathologists Act 1979
Speech Pathologists Registration Act 2001

Queensland is the only jurisdiction that reserves the title 'speech pathologist' to practitioners through registration provisions under the Speech Pathologists Registration Act. In its 2004 NCP annual report, Queensland has advised that it does not intend to amend the Act to remove the title restriction. As for occupational therapists, the state considers that title restriction for speech pathologists is a basic consumer protection measure. In particular, it argues that this restriction can reduce information costs to consumers when identifying competent practitioners, enhancing consumer protection.

Without a robust public interest case, the Council does not consider these arguments to be compelling. Many speech pathologists are employed in the public sector. Further, consumers are unlikely to seek speech pathology services without a referral from another health provider. Both these factors reduce information asymmetry risks for the consumer.

While the Council considers that title protection restricts competition, it accepts that the costs of retaining this restriction are not significant because nonregistrants can still use unrestricted titles. Nonetheless, it confirms its 2002 assessment that Queensland, by not removing title protection restrictions, has not complied with its CPA obligations to review and reform regulations affecting this profession.

C2 Drugs, poisons and controlled substances

Health Act 1937

Following the outcome of the Galbally Review (see chapter 19), the Australian Health Ministers Council endorsed a proposed response to the review recommendations. CoAG is now considering the proposed response out of session.

Queensland has advised that it has amended its legislation as far as possible to implement the Galbally reforms. It notes that additional legislative amendments to implement reforms depend on action taken by other parties under national processes (for example, development of an industry code of practice regarding the supply of clinical samples).

The Council acknowledges that the Galbally Review is subject to national processes. However, because Queensland has not fully implemented review recommendations, it has not yet met its CPA obligations in this area.

D Legal services

Legal Practitioners Act 1995
Queensland Law Society Act 1952

The Queensland Government introduced the *Legal Profession Act 2003* (not proclaimed) to implement some review recommendations reforming the regulation of the legal profession. These include:

- facilitating the incorporation of legal practices
- removing separate admission requirements for solicitors and barristers
- allowing interstate lawyers to practise in Queensland without a local practising certificate.

These reforms remove key restrictions on competition and are consistent with earlier reviews of regulatory issues affecting the profession.

The government subsequently passed the *Legal Profession Act 2004* to update and replace the 2003 Act, to improve consistency with the current national model laws. The new Act also includes regulatory matters relating to multidisciplinary practices. The government has advised that additional reforms will be included in a subsequent Bill with any further changes to ensure consistency with the National Legal Profession Model Laws Project (see chapter 19). It has also advised that it will consider reforms to professional indemnity in the context of national processes.

Queensland has made significant reforms by removing competition restrictions in the legal profession through its Legal Profession Act 2004, with further refinements pending. Reforms to professional indemnity insurance are also being addressed at a national level. The Council thus assesses the state's progress in these areas as incomplete.

In contrast to the above reforms, the Queensland Government had announced that it would consider the reservation of conveyancing work through a separate NCP review. It subsequently undertook this review through a competition impact statement (CIS), but decided, contrary to the CIS recommendation, not to allow licensed conveyancers to operate in the state. The CIS considered:

> … *[a] full law degree is not necessary to the achievement of the objectives of the legal practice legislation with respect to conveyancing. If persons are able to meet standards of knowledge and practical training, allowing them to competently perform conveyancing services and have adequate professional indemnity and fidelity insurance, they should be permitted to compete in the market for conveyancing work.* (Government of Queensland 2003, p. 10)

The review noted that the market for conveyancing services is highly competitive and that it is not clear that the introduction of licensed conveyancers would result in lower fees being charged for conveyancing services. However, it also noted that there is no evidence to indicate that fees would not be lower.

In not supporting this CIS recommendation and in correspondence to the Council on 23 August 2004, the Queensland Government has provided the following reasons why it should not adopt the recommendation of the CIS.

- The market for conveyancing services is already highly competitive, with fixed conveyancing fees (some around $200) widely advertised. Allowing nonlawyers into the market does not always result in lower fees as evidenced by the prescribed maximum fees for settlement agents in Western Australia which are high compared to Queensland's competitive fees.

- The costs of establishing a licensing scheme for such a small occupational group, such as conveyancers, are not justified on the basis of only the possibility of some minor marginal gain.

- A small occupational group, such as conveyancers, may not have the critical mass to support the appropriate level of cover, or may be vulnerable to market failure, particularly in an uncertain insurance market.

- Adopting similar fidelity guarantee insurance arrangements as in South Australia or New South Wales where contributions are paid into a trust fund would have a budget impact as the excess from Queensland's equivalent trust fund is paid to the state's consolidated fund.

- Queensland is being singled out, with conveyancers in some jurisdictions being able to offer more limited services or not being legislatively recognised — such as in Victoria.

The Council accepts that the Queensland conveyancing market is relatively competitive. However, the removal of restrictions on competition should only enhance consumer benefits: conveyancers are likely to establish practices only where they consider that they can provide a competitive product. The Council also notes that Western Australia's prescribed fees for settlement agents are maximum amounts only. These fees cannot therefore be validly compared to actual conveyancing fees charged in Queensland as Western Australian settlement agents are able to charge fees below the levels prescribed.

Regarding licensing scheme costs, the Council accepts that there may be some costs in establishing such arrangements. However, the government has not provided evidence of the likely costs or demonstrated that the costs of establishing a licensing scheme would outweigh the consumer benefits of removing the conveyancing practice restriction. The government also has not provided detailed evidence that it has reassessed its insurance concerns in light of the recent stabilisation of the insurance market.

The Council also does not concur that the adoption of fidelity insurance trust fund arrangements will necessarily lead to an adverse budget impact as contributions from conveyancers can potentially be adjusted to cover the expected risks relating to payouts. In this regard, the state has not provided detailed evidence that similar arrangements in other jurisdictions cannot be tailored to adjust for this expected risk or that this risk is material.

Finally, the Council disagrees with Queensland's assertion that it is being singled out. While there are different regulatory arrangements across jurisdictions, the Council outlined in its correspondence of 3 November 2003 to all governments that the provision of services by nonlawyers would be assessed as part of the 2004 NCP assessment. The Council agrees with Queensland that conveyancers in some jurisdictions provide more limited services than in other jurisdictions. This issue is explicitly addressed in the relevant state and territory chapters. In particular, the Council does not yet consider that Victoria has adequately addressed restrictions that limit the ability of nonlawyers to compete with lawyers in the provision of conveyancing services.

Given the above, the Council assesses the state as not having complied with its CPA clause 5 obligations regarding conveyancing.

E Other professions

Pawnbrokers Act 1984
Second-hand Dealers and Collectors Act 1984

Queensland completed the review of the Pawnbrokers Act and the Second-hand Dealers and Collectors Act in June 2002. The review recommended introducing a single licence type to apply to pawnbrokers and second-hand dealers, but repealing the provisions that require collectors to be licensed. It also recommended: introducing a multi-site licence to replace the current requirement for a business to have a licence for each separate site; reforming the 'fit and proper person' test; and streamlining business conduct restrictions. The government accepted the review recommendations, and implemented them via the *Second-hand Dealers and Pawnbrokers Act 2003*, which was passed in October 2003.

The Council assesses Queensland as having met its CPA obligations in relation to pawnbroker and second-hand dealer legislation.

Auctioneers and Agents Act 1971
Property Agents and Motor Dealers Act 2000

PricewaterhouseCoopers completed a review of the Auctioneers and Agents Act in 2000. Queensland implemented the majority of the review recommendations when it replaced the Act with the Property Agents and Motor Dealers Act, including retaining caps on maximum commissions as a transitional arrangement. In November 2003, Queensland amended the Property Agents and Motor Dealers Regulation 2001 to de-regulate motor dealing and auctioneering commissions and buyers' premiums.

In the 2002 NCP assessment, the Council accepted the possibility of a net community benefit in temporarily retaining maximum commissions while educating market participants about their rights and responsibilities. It postponed finalising its assessment of this issue pending Queensland's review of the matter. A further review of commissions was conducted in 2003 out of which some steps were taken to deregulate all commissions and buyer premium fees except commissions for real estate transactions (both private treaty and auctions). The Queensland Government determined, when deregulating the other commissions, that a further review of real estate commissions should be undertaken in late 2004. The preliminary stages of this review have now commenced

The Council thus assesses Queensland as not having met its CPA obligations in this area, because the state has yet to finalise its review and reform of the regulation of real estate commissions.

Travel Agents Act 1988

Governments are taking a national approach to reviewing their travel agent legislation. The Ministerial Council on Consumer Affairs commissioned the Centre for International Economics, overseen by a Ministerial council working party, to review legislation regulating travel agents. The review findings and the working party response to the review recommendations are outlined in chapter 19.

Queensland is currently progressing implementation of the review recommendations to lift the current $50 000 licence exemption threshold and remove the exemption for Crown-owned business entities. The Council thus assesses Queensland as not having met its CPA obligations in relation to travel agents legislation because it has not completed reforms in this area.

Health Act 1937 (provisions relating to hairdressing)

The main recommendation of Queensland's NCP review of hairdressers was to replace the licensing of premises with the licensing of businesses undertaking higher risk (that is, skin-penetrating) procedures. The review recommended that licensing of other activities, including hairdressing, be discontinued.

The *Public Health (Infection Control for Personal Appearance Services) Act 2003* was passed in October 2003 and commenced on 1 July 2004. Under the new legislation, which implements the review's recommendations, higher risk businesses (for example, body piercing and tattooing) will be licensed, but lower risk businesses (such as hairdressing) will not.

The Council thus assesses Queensland as having complied with its CPA obligations in relation to hairdressers.

F1 Workers' compensation insurance

Workcover Queensland Act 1996

The review of workers' compensation insurance was completed in December 2000, leading the government to legislate changes in the *Workers Compensation and Rehabilitation Act 2003* to establish a separate regulatory entity (Q-COMP) from 1 July 2003. The monopoly insurance arrangements continue.

For reasons outlined in chapter 9, the Council has not assessed Queensland's compliance with its CPA obligations in this area for the 2004 NCP assessment.

F2 Superannuation

Superannuation (State Public Sector) Act 1990

Queensland's public sector employees are required to hold a superannuation account with the government-owned superannuation provider, QSuper. Contributors can choose between an accumulation account, which is a fully funded superannuation account, and a defined benefit account, which offers a fixed retirement income. The Superannuation (State Public Sector) Act allows QSuper to use multiple investment fund managers. To date, QSuper has chosen to use just one manager (the Queensland Investment Corporation), which outsources some funds management to private funds.

Queensland reported to the Council that the Government Superannuation Office examined the effects on competition of the Superannuation (State Public Sector) Act and associated Regulations, reporting in early 2003. The review was conducted in accordance with Queensland Treasury's public benefit test guidelines, whereby existing arrangements are compared with less restrictive alternatives. The review accounted for:

- Queensland's view that the Senate's refusal (until June 2004) to pass the Australian Government's choice of fund legislation demonstrates the complexity of the choice issue

- a 2001 review of Queensland's local government superannuation scheme (similar to the QSuper arrangements), which concluded that the monopoly arrangements are necessary to achieve the scheme's objectives

- a major review of Queensland public sector superannuation in recent years, which resulted in public servants being given the choice of the defined benefits scheme or an accumulation account with investment choice.

The Government Superannuation Office's review described the overriding objective of the current legislation as being to ensure equitable access of public sector employees to a superannuation scheme that maximises benefits to members. It considered two alternative models for the government to meet its objectives:

1. One model would allow individual government agencies to remain with QSuper as the superannuation provider for their employees, or make alternative superannuation arrangements. Queensland considers that few, if any, agencies would move away from QSuper.

2. The second model would be a variation on the first, but would allow private sector employees to join QSuper. The review argued that this would add to QSuper's marketing and distribution costs.

The public benefit test found that QSuper can offer higher than average benefits to members because it is a not-for-profit body, has small marketing requirements and enjoys economies of scale as a result of its large guaranteed membership (which also allows QSuper to take a long term investment approach). Queensland argued that the first alternative model would lead to:

- employers and contributors who leave QSuper incurring transitional costs and increased fees
- QSuper losing some economies of scale as some members leave the scheme
- the potential for the Queensland public sector to experience difficulty in attracting staff if the potential employees believe that QSuper is weakened.

Queensland contended that the second alternative model would add to QSuper's costs.

The review concluded that the benefits of QSuper's monopoly provision of superannuation outweigh the costs, especially for public sector employees, who are the primary stakeholders. The review considered that the effect of the current restriction on competition and the economy generally is negligible. Queensland noted that QSuper accounts for a small proportion of superannuation funds under management in Australia, and that employees leaving the public sector can transfer their superannuation funds to another superannuation provider, and vice versa.

In the 2003 NCP assessment, the Council noted that Queensland's review focused on the cost–benefit calculus for QSuper and its members, rather than on the broader market impact for the provision of superannuation services. In its 2004 NCP annual report to the Council, Queensland has argued that this focus is appropriate because QSuper and its members are the biggest stakeholders. Queensland has also contended that the review report found that the current superannuation arrangements provide members with better retirement income outcomes than would be available under other arrangements, thus satisfying a legislative objective of maximising benefits to members.

In its 2004 NCP annual report to the Council, Queensland has reiterated that:

- any significant transfer of QSuper members to other superannuation funds (if competitive arrangements were introduced) would reduce the financial strength of QSuper and thus the benefits available to members
- given information asymmetry, employees who are given choice may make fund choices that make them worse off

- government agencies would have to make superannuation contributions to a range of funds, thus increasing their costs

- under current arrangements, QSuper members can choose between a defined benefit scheme and four investment options within an accumulation account.

Queensland's public benefit test compared the outcomes of current and alternative arrangements for providing superannuation. The overall net impact of the restriction on members and the wider community is difficult to assess, and the Council has taken the review's conclusions into account.

The Council concludes that Queensland has complied with its CPA clause 5 obligations in this area.

G2 Liquor licensing

Liquor Act 1992

Following completion of a review in 1998, 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 permitted 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 NCP 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 having a maximum of three detached packaged liquor outlets) and provide bar facilities at the site of the hotel licence. Queensland's rationale for retaining these requirements is that:

- the potential harms from alcohol misuse support the concept of a 'specialist provider' model limited to general licence holders

- any loss of revenue from packaged liquor sales by country hotels would have adverse effects on the hotels' viability, to the detriment of the important social role that hotels play in rural areas.

The Council indicated in the 2002 NCP assessment that Queensland's replacement of its needs test with a public interest test is consistent with CPA principles. It considered, however, that 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) was not justified by the evidence provided in the NCP review or in subsequent correspondence from the Queensland Government.

Queensland's restrictions on packaged liquor sales were considered further in the Council's 2003 NCP assessment. The Council concluded that Queensland had not established a public interest case for its restrictions, noting the absence of similar provisions in other jurisdictions. It also noted, following Victoria's removal of its 8 per cent upper limit on licence holdings, that 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. Further, there is no evidence that the restrictions contribute to harm minimisation.

The Council previously suggested that confining the restriction to rural and regional areas would support rural hotels while enabling urban areas to benefit from greater competition. Queensland maintains, however, that communities on the outskirts of urban centres also rely on local hotels for much of their social interaction and that these communities too could be adversely affected by the reforms.

An alternative approach to reform might utilise a transitional arrangement, phasing in increases in the number of bottleshops permitted with each hotel licence. The Council notes that there has been a low take up of detached bottle shops (less than ten percent of hotel licences have the allowable maximum number of three bottle shops), which suggests that an increase in the maximum could be accomplished without significant disruption to the market. Queensland has rejected this approach, maintaining that it would predominantly assist the major chains at the expense of smaller operators and, to the extent that access to alcohol was increased, would increase alcohol related social harm. As noted, the Council considers that maintaining legislative restrictions to support one class of sellers does not constitute a public benefit.

The Council confirms its 2003 NCP assessment that Queensland has not complied with its CPA obligations in relation to liquor licensing.

H1 Other fair trading legislation

Funeral Benefit Business Act 1982

The Funeral Benefit Business Act regulates the operation of funeral benefit businesses. The NCP review (completed in October 2000) recommended against changing the rights and responsibilities of parties under existing contracts. For any new contracts entered into, or new business conducted, however, the review recommended reforms (summarised in the Council's 2003 NCP assessment) that included:

- the removal of the restriction that only companies may operate funeral benefit businesses
- the removal of the Queensland location requirement for funeral benefit businesses
- the removal of the provisions requiring Office of Fair Trading approval of all advertising
- the removal of the registration requirement.

The Queensland Government responded to the review in April 2003 and accepted all recommendations. The *Second-Hand Dealers and Pawnbrokers Act 2003*, which incorporates the Funeral Benefit Business Act amendments to give effect to the recommendations, was assented to in October 2003.

The Council thus assesses Queensland as having met its CPA clause 5 obligations in relation to the Funeral Benefit Business Act.

H2 Consumer credit legislation

Credit Act 1987

Following completion of its review of the Credit Act, Queensland indicated to the Council that it intended to repeal the Act. However, Queensland subsequently advised that repeal could not occur until litigation in a few existing cases is finalised. The litigation still before the courts stemmed from lenders who breached their obligations under the Act and had to apply to the Supreme Court for re-instatement of their legal right to charge interest under the loan contracts affected by the breaches. The possible outcomes of that litigation were the lenders' reimbursement of interest to affected consumers and/or payment of fines to the Office of Fair Trading. Queensland advised the Council that the last matter was completed in late July 2004. (There was a 28-day appeal period.)

In any case, Queensland officials have informed the Council that the Act ceased to have any practical impact because it has been eight years since any loans have been subject to the Act.

Given that the legislation has no practical effect, and that the outstanding litigation under the Act has been finalised, the Council assesses Queensland as having met its CPA obligations in relation to this Act.

H3 Trade measurement legislation

Trade Measurement Act 1990

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

Because the national review and reform of trade measurement legislation has not been completed (see chapter 19), Queensland has yet to meet its CPA obligations in relation to trade measurement legislation.

I1 Education

Grammar Schools Act 1975

A NCP review of the Grammar Schools Act was completed in September 1997. A second NCP review was completed in June 2002 and recommended removing the minimum financial requirement for the establishment of a grammar school. A third, and wider, review of the Act, to consider the impact of other legislation for the accreditation of non-state schools and the financial administration of grammar schools, was completed in March 2003. The Act was amended in late 2003 by the *Grammar Schools and Other Legislation Amendment Act 2003,* which implements the recommendations of both the NCP and wider reviews.

The Council assesses Queensland as having met its CPA obligations in this area.

I2 Child care

Child Care Act 1991
Child Care (Child Care Centres) Regulation 1991
Child Care (Family Day Care) Regulation 1991

A major review of Queensland's child care legislation and its NCP implications began in 1999 and was completed in May 2002. The review examined the impact of licensing fees and the costs of meeting licensing requirements. These costs arise from the requirements to employ qualified staff and meet building and facility standards. The review also examined the impact of regulating previously unregulated service types within the child care sector.

The government endorsed the review in June 2002. The review recommended the adoption of the regulatory tiering framework proposed for the regulation of child care in Queensland. As a result, the *Child Care Act 2002* and the Child Care Regulation 2003 commenced operation on 1 September 2003.

The Council assesses Queensland as having met its CPA clause 5 obligations in this area.

I3 Gambling

Wagering Act 1998

Queensland's omnibus review of gambling regulation included a review of the Wagering Act, which grants an exclusive licence to UNiTAB until 2013. The review report was released in December 2003 and argued that the exclusive licence is necessary to ensure the viability of the state's racing industry and that removing the licence would signal that the government is encouraging a proliferation of gambling opportunities. The Council does not accept these arguments: the 1999 Productivity Commission inquiry into Australia's gambling industries identified alternative methods to fund racing, and totalisator branches are already widespread. However, the review also found that the government faces significant compensation costs if the exclusivity were to be revoked before its expiry, and the Council acknowledges that these costs are likely to outweigh the benefits from such an action. The government has endorsed the review findings, and no change to the Wagering Act is required.

The Council assesses Queensland as having complied with its CPA obligations in relation to totalisator wagering.

Gaming Machine Act 1991

Queensland reviewed its Gaming Machine Act as part of its omnibus gambling review completed in December 2003. The review report examined venue caps (280 for licensed clubs and 40 for hotels), noting that machine numbers in hotels had risen from 4963 in June 1997 to 13 360 in June 2000 as the venue cap was increased. Over the same period, machine numbers in licensed clubs had increased from 16 079 to 18 360. The review concluded that applying the same cap to hotels as to clubs would lead to further growth in machine numbers and associated harm. For the same reasons, it supported the statewide cap on hotel (but not club) gaming machines. The review also supported the higher cap for clubs on the grounds that the revenue raised from gaming machines in clubs is used to fund community facilities and activities.

The Council does not accept that promoting the club industry via differential caps is the only way in which to provide community facilities. However, it recognises that increasing the hotel and statewide caps would add considerably to the number of machines in operation with some potential for increased harm (although this potential may be exaggerated because gamblers already have easy access to gaming machines). The Council notes the review finding that few clubs operate the maximum number of gaming machines, implying that there may be scope to reduce the club cap. For the present, however, the Council accepts Queensland's position in regard to the proliferation of gambling opportunities that might result from increasing the number of hotel gaming machines.

Each club and hotel in Queensland is required to enter into an agreement with a licensed monitoring operator. The operators ensure the integrity of each gaming machine and supply the government with financial information from each machine. They also supply new and used machines, ancillary gaming equipment and other services, including maintenance. Currently, there are four licensed monitoring operators, and each is restricted under the terms of its licence to a maximum of 40 per cent of total market share. The review examined the 40 per cent limit, finding that the provision ensures Queensland has more competitors in the market than do other jurisdictions. While acknowledging arguments for lifting the restriction on market share, the review found that the current arrangements appear to be working well and that, on balance, it would not be in the public interest to remove the restriction. The review's finding appears to reverse the onus of proof in the CPA obligations, particularly given that the review also noted that the restriction may not be necessary given this is a market in which experienced operators use well tested systems.

The market sharing arrangement is not related to issues of probity and as such does not appear to be underpinned by any reasonable objective.

As the government has endorsed the review the Council assesses Queensland as not meeting its CPA obligations in relation to the monitoring operators' cap for gaming machines. The Council notes that the Gaming Commission, which

administers machine operator licences, is currently considering an application for removal of the 40 per cent limit. The Government has indicated it has no objection to this change, nor have the existing licensed machine operators which were consulted along with other stakeholders on this issue.

Interactive Gambling (Player Protection) Act 1998

Queensland's Interactive Gaming (Player Protection) Act establishes criteria for licensing interactive gaming suppliers, and controls all forms of interactive gambling in Queensland. The Australian Government subsequently enacted its legislation; as a result, the only operator licensed under Queensland's legislation surrendered its licence on 1 October 2001. No further licences have been issued. Queensland considered the Act as part of its omnibus review of gambling legislation. The review recommended that the current licensing restrictions be retained because they are in the public interest. The government endorsed that recommendation, and the Act has been retained without change.

Queensland has completed its review and reform of the Interactive Gaming (Player Protection) Act, so the Council assesses it as having complied with its CPA obligations in this area.

Keno Act 1996
Charitable and Non-profit Gambling Act 1999

Queensland considered the Keno Act and the Charitable and Non-profit Gambling Act in its omnibus gambling legislation review, which released its report in December 2003. Currently, Jupiter's Gaming Pty Ltd has an exclusive licence to provide keno until 2007. The review supported the exclusive licence as being necessary to permit the operator to develop short term and medium term viability, given the costs of establishing keno operations. The report noted that the government would have to pay compensation if it revoked exclusivity, and that the government could consider issuing a second licence after 2007.

Charitable and nonprofit gaming is regulated in four categories to ensure probity; in most cases, a licence is not required.

The government endorsed the review findings, and no legislative change is required for keno or other minor forms of gambling.

The Council previously indicated that it accepts that the cost of compensating licence holders for the early removal of licence exclusivity is likely to outweigh the benefits of such an action. The Council thus assesses Queensland as meeting its CPA obligations in relation to minor gambling.

J3 Building occupations

Surveyors Act 1977

Queensland completed a review of the Surveyors Act in 1997. The review supported retaining the licensing system for cadastral surveyors, arguing that the system helps to maintain the stability and integrity of the land title arrangements. It recommended, however, removing a number of restrictions on competition — namely, business name approval, the setting of surveyors' fees by the Surveyors Board of Queensland (a provision that had not been used for many years), and the requirement that the majority of directors of bodies corporate must be registered surveyors. The government endorsed the review recommendations.

Following consultation, the government introduced the Surveyors Bill 2003 to Parliament on 27 May 2003. When the Council finalised the 2003 NCP assessment, Parliament had not completed its consideration of the Bill, and the Council concluded that review and reform activity was incomplete.

The legislation was enacted (with minor amendment) late in 2003. The Act retained the existing model for regulating surveyors, and removed the three restrictions that the NCP review did not support. A proclamation commencing the Act was made on 16 July 2004. The Surveyors Regulation 2004 was also gazetted on that date, taking effect on 1 August 2004. This Regulation sets out the charges that apply when surveyors seek to be registered with the Surveyors Board of Queensland, and the professional indemnity insurance requirements that surveyors must fulfil for registration.

The Council assesses Queensland as having met its CPA clause 5 obligations in this area.