

# 4 Primary industries

This chapter assesses governments' fulfilment of their Competition Principles Agreement (CPA) obligations as these arise in:

- agricultural commodity supply management and marketing;
- agriculture-related products and services;
- mining;
- fisheries; and
- forestry.

The review and reform of anticompetitive regulation (CPA clause 5) dominates National Competition Policy (NCP) activity in these areas. Also important is the application of competitive neutrality (CPA clause 3) in forestry and structural reform (CPA clause 4) in sugar marketing.

## Agricultural product marketing

Governments have a long history of involvement in the marketing of agricultural products. A Productivity Commission staff research paper (PC 2000d) recently reviewed this history, noting that farmers began to voluntarily form State or regional cooperatives at the turn of the twentieth century. Following World War I, agricultural product prices boomed and then collapsed, sparking State governments into legislating compulsory membership of formerly voluntary cooperatives. Following World War II, when a similar price collapse was feared, farmers embraced national statutory price stabilisation and marketing arrangements. These arrangements guaranteed average returns via Commonwealth Government underwriting of export receipts and domestic price setting. In the 1970s and 1980s, in response to growing evidence of production inefficiencies and costs to taxpayers and domestic consumers, the Commonwealth Government reformed and, in some cases, phased out these schemes. Statutory marketing authorities, commonly referred to as 'single desks', nevertheless remain for some key agricultural products. Table 4.1 sets out the principal agricultural activities with 'single desks' at the time governments introduced NCP.

**Table 4.1:** Key agricultural products with statutory marketing arrangements when the NCP was introduced

<i>Product</i>	<i>Jurisdiction(s)</i>
Coarse grains and oilseeds	New South Wales, Victoria, Queensland, Western Australia and South Australia
Dairy	Commonwealth, New South Wales, Victoria, Queensland, Western Australia, South Australia, Tasmania and the ACT
Eggs	Queensland, Western Australia and Tasmania
Horticulture	Commonwealth
Poultry meat	New South Wales, Victoria, Queensland, Western Australia and South Australia
Potatoes	Western Australia
Rice	New South Wales
Sugar	Queensland
Wheat	Commonwealth, New South Wales, Victoria, Queensland, Western Australia and South Australia

## Legislative restrictions on competition

In terms of the NCP, the relevant feature of most 'single desks' is the monopoly they hold on selling an agricultural product grown within their jurisdiction. This may be a domestic sales monopoly (such as for potatoes in Western Australia) or an export sales monopoly (such as that held by AWB Limited, formerly the Australian Wheat Board) or both (such as those held by the Queensland Sugar Corporation and the New South Wales Rice Marketing Board).

A 'single desk' generally pays farmers a price that reflects an average of the prices it receives, less its marketing and transport costs. It also usually determines such matters as crop varieties planted and quality grades. A 'single desk' with a domestic sales monopoly usually has rights to acquire produce compulsorily from farmers, to prevent farmers from selling their produce interstate. 'Single desks' thus require individual farmers to give up a considerable degree of choice in how they operate their business, what they produce and how they market their production. In return, farmers expect to benefit from earning a higher net income over the long term.

## Regulating in the public interest

The Productivity Commission assessed at some length the arguments for 'single desks' (PC 2000d). In summary, it argued that a *prima facie* case for restricting competition in export marketing exists where:

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- a country's demand for imports from Australia is relatively insensitive to price, supply from competing sources is constrained and there are limited substitute products; or
  - a country imposes a quota on imports of the product(s) from Australia.

In either of these circumstances, restricting competition between rival Australian exporters is expected to raise national income received from the particular export market. This will be in the overall public interest so long as income forgone in other export markets and any productivity losses in Australia do not exceed this additional income. Productivity losses may arise through pooling – which may increase domestic prices, reduce rewards for quality and innovation, and foster inefficient logistical arrangements – and reduced risk spreading opportunities for producers and competing domestic marketers.

Any net benefit from restricting competition in export marketing should be maximised by allowing competition in:

- those export markets that do not clearly match the above circumstances; and
- Australia's domestic markets as much as possible (that is, markets for the product, substitutes, intermediate goods, associated services and factor markets).

This is more likely to be achieved through export licensing or export taxes than through maintaining a conventional 'single desk'.

Restricting competition in domestic marketing may be in the public interest where this would achieve benefits such as:

- allowing consumers to make informed product choices;
- supporting consumer confidence in product safety;
- promoting equitable dealing with small businesses; and
- assisting small businesses to become more efficient;

and where costs (such as increased prices or reduced product quality) do not exceed the value of these benefits.

Governments' review and reform activity relating to agricultural product marketing regulation is discussed and their compliance with CPA obligations assessed for the following products:

- wheat, barley and other grains;
- poultry meat; and
- other products — dairy, eggs, horticulture, rice, sugar and potatoes.

## Wheat, barley and other grains

For many years, the Commonwealth and most States and Territories maintained grain marketing authorities with an exclusive right within their jurisdiction to acquire prescribed grains and to sell in domestic and/or export markets (table 4.2). The central aim of these statutory grain marketing monopolies was to establish market power and thereby raise prices received for the regulated commodities.

Table 4.2: Grains subject to marketing restrictions before NCP review and reform

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Marketing board</i>	<i>Domestic</i>	<i>Export</i>
Commonwealth	<i>Wheat Marketing Act 1989</i>	Australian Wheat Board		Wheat
New South Wales	<i>Grain Marketing Act 1991</i>	NSW Grains Board	Barley Sorghum Oats Canola Safflower Sunflower Linseed Soybeans	Barley Sorghum Oats Canola Safflower Sunflower Linseed Soybeans
Victoria	<i>Barley Marketing Act 1993</i>	Australian Barley Board	Barley	Barley
Queensland	<i>Grain Industry (Restructuring) Act 1993</i>	Grainco Australia Limited	Barley Sorghum	Barley Sorghum
Western Australia	<i>Grain Marketing Act 1975</i>	Grain Pool of Western Australia		Barley Canola Lupins
South Australia	<i>Barley Marketing Act 1993</i>	Australian Barley Board	Barley Oats	Barley Oats
Northern Territory	<i>Grain Marketing Act 1983</i>	NT Grain Marketing Board	Various	Various

As well as their own grain marketing monopolies, most States also had legislation importing the Commonwealth *Wheat Marketing Act 1989* into State jurisdiction. This State legislation generally has no significant practical restrictive effect beyond the Commonwealth Act, so is not a priority competition matter.

In the seven years since the signing of the CPA, there has been much change. Victoria and the Northern Territory have removed all restrictions on coarse grain marketing, to be followed by Queensland on 1 July 2002 and New South Wales on 30 September 2005. The Commonwealth has allowed limited competition in export marketing of wheat. Western Australia is finalising a

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review of its restrictions and South Australia is to complete a further review by November 2002.

## Commonwealth

### Review and reform activity

The National Competition Council found in the 1999 NCP assessment that the Commonwealth Government had not met its obligations under the CPA clause 4 (structural reform of public monopolies) in relation to the privatisation of the Australian Wheat Board (AWB). The Commonwealth did not show that it had reviewed matters such as the appropriateness of granting a monopoly to a private company and the most effective means of separating regulatory functions from commercial functions of the public monopoly (clause 4[3][d]).

In early 2000, the Commonwealth Government commissioned a three-member committee to review the Wheat Marketing Act against CPA clauses 4 and 5 and other policy principles. The committee received some 3000 submissions and conducted consultations throughout the country and overseas. It released a draft report for comment in mid-October 2000, and the Commonwealth Minister for Agriculture released the final report on 22 December 2000.

In relation to the CPA clause 5, the committee argued that introducing more competition was more likely to deliver greater net benefits to growers and the wider community than would continuing the export controls (Irving, Arney and Lindner 2000). It found that:

- any price premiums earned by virtue of the 'single desk' are likely to be small (estimated at around US\$1 per tonne in the period 1997–99);
- the 'single desk' is inhibiting innovation in marketing; and
- the 'single desk' is impeding cost savings in the grain supply chain.

Estimates of the economic impact of the 'single desk' arrangements ranged from a gain of \$71 million per year to a loss of \$233 million. The committee felt, however, that it would be premature to repeal the Act without a further, relatively short evaluation period. The committee was concerned that the estimation of benefits and costs is complex and that some uncertainty remained. It also believed there is a 'possibility that the new more commercial arrangements for wheat marketing might achieve more clearly demonstrable net benefits than was evident during this review' (Irving, Arney and Lindner 2000, p. 7). The committee therefore recommended that:

- the Commonwealth retain the 'single desk' until the 2004 review required by the Act;

- this review be the final opportunity to show a net community benefit from the arrangements, and that it incorporate NCP principles; and
- the Commonwealth convene a joint industry/government forum to develop performance indicators for the 2004 review.

The committee also recommended that the Wheat Export Authority (WEA) trial for the three years until the 2004 review a simplified export control system whereby it licenses exporters annually. It believed that the freight rate differential between bulk exports and exports in containers and bags provided a high degree of protection for bulk exports by AWB International (AWBI) to all markets except Japan, and that opening up the export of wheat in containers and bags would allow highly desirable innovation in the discovery, development and expansion of markets for wheat exports.

In relation to the CPA clause 4 structural reform obligation, the committee found that the Act has not achieved a clear separation of the regulatory and commercial functions of the former AWB. It recommended that the Commonwealth amend the Act to:

- ensure the WEA is totally independent; and
- allow, for the three years until the 2004 review, the authority to consent to the export of:
  - wheat in bags and containers without consulting AWBI; and
  - durum wheat without obtaining AWBI's written approval.

The Commonwealth's response to the review recommendations was announced on 4 April 2001. It retained the 'single desk' but declined to conduct the 2004 review under NCP principles. It argued that the latter decision is necessary to avoid further uncertainty in the industry and for wheat growers.

The Commonwealth also declined to amend the Act to ensure the independence of the WEA, particularly in relation to the export consent arrangements. According to the Commonwealth, removal of the AWBI's role would have significantly changed the balance between the operations of the WEA and AWBI, which might have affected the AWB's then proposed listing on the Australian Stock Exchange.

The Commonwealth asked the WEA to develop rigorous and transparent performance indicators, however, to ensure the 2004 review accurately measures the benefits to industry and the community. On 4 September 2001, the authority released a framework for monitoring AWBI's performance in:

- its role in the export consent arrangements; and
- its own export marketing and supply chain management.

The WEA will annually report the results of its monitoring to the Minister for Agriculture and the Grains Council of Australia. It also releases a summary report to the public. A working group — comprising the WEA, AWBI, the Department of Agriculture, Fisheries and Forestry, and the Grains Council of Australia — developed the framework. It considered the views of the other industry representatives.

Finally, the Commonwealth agreed to improve the export consent system based on the licensing arrangements proposed in the review. On 28 September 2001, the WEA announced changes to the export consent arrangements from 1 October. The changes included specified consent criteria, a quarterly application cycle, a 12-month consent for shipments to niche markets and a 3-month consent for other shipments. The above working group developed these changes too.

### Assessment

The Council is satisfied that the Commonwealth's review of the Wheat Marketing Act was open, independent and rigorous. It involved extensive public consultation, the review committee was generally accepted as capable of undertaking an independent and objective assessment of all relevant matters, and the recommendations were well grounded in the available evidence. Nevertheless, the Commonwealth has not yet fulfilled its CPA clause 5 obligation. The 2000 review did not show that retaining the wheat export 'single desk' is in the public interest; as noted above, it found that allowing competition is more likely to be of net benefit to the community. The CPA clause 5 obligation therefore remains outstanding.

The wheat export 'single desk' will be subject to review again in 2004. The Council is not confident, however, that this review will meet the standard expected of a CPA clause 5 review and deliver a robust outcome. First, the Minister for Agriculture has ruled out conducting the 2004 review under NCP principles, 'to avoid further uncertainty in the industry and for wheat growers' (Truss 2001). Second, the Minister was reported as saying that the wheat export 'single desk' will continue beyond the 2004 review (Rayner 2002). Third, the performance monitoring framework developed for the 2004 review is inadequate.

The framework does not appear to consider the benefits and costs of the 'single desk' to sections of the community other than growers. Analysis for the 2000 review indicated there would be net gains from removing the wheat export 'single desk' including that:

- domestic consumers of wheat (such as flour millers, stock feed processors and intensive livestock farmers) would gain slightly from a reduction in domestic wheat prices; and
- regional communities would be better off in the long term.

The framework's measures of price discrimination — the central means by which a 'single desk' might improve returns to growers — are unlikely to be conclusive. These measures rely on the Wheat Industry Benchmark<sup>1</sup> developed by AWBI. The 2000 review found that similar measures did not explain whether observed price differences were due to competition restrictions or other factors.

Fourth, the Council is concerned that the WEA may not be sufficiently independent. The Productivity Commission recently said of the authority's equivalent in the horticulture industry, Horticulture Australia Limited (HAL), that:

*HAL could not be regarded as a suitably independent body to conduct reviews, for two important reasons:*

- *first, HAL administers the export control powers, which raises the risk that it may tend to favour outcomes that maintain or expand its role; and*
- *second, HAL is an industry-owned company, with peak grower bodies as its shareholders, which could raise perceptions (at least) that it may tend to favour grower interests over the interests of others.*

*It is a well established principle that those who develop policy should be different from those who administer it.'* (PC 2002a, p. 175)

The first critique certainly applies to the WEA. The second critique is not directly applicable but there is a clear parallel. The authority is not an industry-owned company, but two of its board members are representatives of the Grains Council of Australia, which has a longstanding policy of support for the wheat export 'single desk'.

The Council therefore concludes that the Commonwealth has not offered a reasonable prospect of meeting its CPA clause 5 obligation relating to the regulation of wheat export marketing.

For now, the WEA's export consent arrangements will govern the degree of competition in the export of Australian wheat. The Council is concerned that the revised arrangements are substantially more restrictive than the regime recommended by the 2000 review. Under the revised arrangements, exporters are not, as the 2000 review recommended, granted a licence to export subject to certain conditions (such as destination, shipment method and reporting). Rather, the WEA requires exporters to obtain its consent for every individual export shipment, although it now allows exporters to make one application

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<sup>1</sup> The Wheat Industry Benchmark principally compares the actual US dollar price received by AWBI with the average US dollar price for a basket of similar US and foreign wheat grades. It also benchmarks AWBI's management of its foreign exchange exposure and supply chain costs.

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covering multiple proposed shipments. Thus, an exporter holding a 12-month 'niche market' consent (principally for bagged/packaged wheat) is permitted to export only the shipments specified in their consent application, which must be submitted two months before the consent period begins. Exporters must make further applications for any other proposed shipments. This imposes a significant compliance burden on exporters and hampers their ability to pursue export opportunities that arise at short notice and to meet changes in customer requirements.

In addition, the guidelines to the revised arrangements leave considerable uncertainty for exporters about whether a proposed shipment will be granted a consent and for what volume. In determining the eligibility of an exporter, the WEA is to have regard to 'Australia's reputation in overseas markets as a reliable supplier of wheat' and is to assess 'the exporter's history in international commodity trade, especially in the export of wheat and grain from Australia', and 'any other relevant matter'. The WEA thus appears to have a wide scope for discretion. Moreover, protecting Australia's reputation is not an objective or function specified in the Act or identified by the 2000 review or the Commonwealth response on 4 April 2001.

The Commonwealth Office of Regulation Review reported that the regulation impact statement prepared for these revised guidelines was inadequate.

In relation to CPA clause 4, while the Commonwealth has now undertaken the review that it was obliged to do before privatising the AWB, it has not addressed the 2000 review committee's recommendations to amend the Act to ensure the independence of the WEA, particularly its role in controlling exports. In the Council's view, it is not sufficient to argue that this would have significantly changed the balance between the operations of the WEA and AWBI, and might have affected the AWB's then proposed listing on the Australian Stock Exchange. This argument by the Commonwealth simply underlines its failure to conduct a CPA clause 4 review before privatising the AWB. Structural reform pre-privatisation is generally much more likely to be successful than reform post-privatisation (as recognised by CPA clause 4). The Council therefore finds that the Commonwealth is still to meet its CPA clause 4 obligations. The Council will not revisit these matters unless the Commonwealth moves towards meeting its CPA obligations.

## New South Wales

### Review and reform activity

The Government of New South Wales appointed a group of four Government representatives and four industry representatives to review the *Grains Marketing Act 1991*. The review group reported to the Government in July 1999. A majority of the review group found that there is no market failure or other justification for domestic market restrictions, and

recommended removing the restrictions by no later than 31 August 2001 for malting barley and no later than 31 August 2000 for all other grains.

In relation to export market restrictions, a majority of the review group found that the statutory status of the NSW Grains Board gave it privileged access to premium prices available in the Japanese market for feed and malting barley, and that this is of net benefit to the New South Wales economy. A majority also favoured retaining restrictions on sales of malting barley to China, although the evidence to justify this restriction was inconclusive. Consequently, the majority recommended that restrictions be retained only for:

- sales of feed and malting barley to Japan and sales of malting barley to China; or
- all export sales of feed and malting barley if discriminating between countries proves to be impractical.

The majority of the review group further recommended that these restrictions be reviewed again by August 2004.

Following release of the review report, the solvency of the NSW Grains Board came under mounting press and industry speculation. On 16 August 2000, the Minister for Agriculture announced that the board would retain its vesting powers for another five years and that the New South Wales Government would help it restructure its financial and trading arrangements.

Subsequently, however, the NSW Grains Board collapsed. Given that the Grain Marketing Act excluded other major grain buyers, growers were left without any buyer for regulated grain crops that were approaching harvest. On 26 October 2000, the Minister announced that 'Grainco Australia Limited will act as the sole agent for the NSW Grains Board on future trading and marketing of export barley, canola and sorghum, and domestic malting barley' and that 'this agency agreement will operate within the framework of the NSW Grain Marketing Act until 2005' (Amery 2000). The Minister also noted that 'Grainco Australia was the most favourable of the four tenderers to act as the Board's agent and the agreement ensures that all outstanding payments to growers will be met'. Grainco Australia bid \$25.2 million for the right which it exercises under constraints set out in a Deed with the Government and the Administrator of the Grains Board.

All restrictions on the marketing of sunflower, safflower, linseed and soybeans, and domestic marketing restrictions for feed barley, canola and sorghum were subsequently removed. These changes, initially implemented administratively, were formalised by the *Grain Marketing Amendment Act 2001* assented to on 14 December 2001. The Amendment Act provides for the remaining restrictions on domestic marketing of malting barley and export marketing of feed barley, malting barley, sorghum and canola to expire on 30 September 2005.

Recently there has been significant grower disquiet about the pool prices offered by Grainco Australia in comparison with those available to Victorian growers. In response the Government has established an independent monitoring committee to scrutinise Grainco Australia's prices.

### Assessment

From October 2005, there will be no restrictions on the marketing of grain in New South Wales. In the interim, however, restrictions remain on domestic marketing of malting barley and export marketing of feed barley, malting barley, sorghum and canola. New South Wales is obliged to show that the temporary retention of the remaining grain marketing restrictions is in the public interest.

As noted earlier, the only restrictions found by the 1999 review to be in the public interest were those on marketing of feed and malting barley to Japan and malting barley to China. These recommendations could not be considered to be reasonable on the basis of the evidence, however, for the following reasons.

The review group commissioned econometric analysis by the Department of Agriculture, but the only robust conclusion was that the NSW Grains Board had imposed a small net public cost by raising domestic prices for malting barley above export prices.

The review group's finding of a net benefit from restricting competition in marketing barley to Japan ultimately rested on:

- an observation that the Japanese market returned premium prices; and
- a judgment that continued access to this market depended on maintaining a statutory monopoly marketer.

Given that price premiums can be attributed to many factors other than market power — such as additional quality, service or reliability — and can occur in competitive markets, they are not sufficient as evidence of a benefit from restricting competition.

Also, the evidence on market access is questionable. The report notes that a Japanese representative (credentials undisclosed) told the government members of the review group that NSW Grains Board's access to market quota (and premium prices) is largely attributable to its quasi-government status. A quasi-government grain marketer need not necessarily have a monopoly, however, as recognised by the 1997 review of Victoria's and South Australia's barley marketing monopoly.<sup>2</sup> The New South Wales review report

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<sup>2</sup> The review suggested that, if necessary to retain access to the Japanese barley market, the Australian Barley Board could have been retained as a statutory authority without single desk and compulsory acquisition powers (CIE 1997, p. 75).

notes that the Victorian/South Australian review and Queensland's 1995 review of its barley marketing monopoly, which recommended retaining the export monopoly (which expired on 30 June 2002). The New South Wales review report does not critically evaluate the evidence and findings in any of these other reports, but simply concludes that the review group made its finding 'on the weight of evidence'.

The review group did not find a net public benefit from restricting competition in marketing malting barley to China. It nevertheless recommended continuing the monopoly on exports to this market as a precaution in view of residual uncertainty about whether price premiums exist. As discussed above, any price premiums that exist are not sufficient evidence of a benefit from restricting competition.

The membership of the review group may explain why it made these recommendations without robust evidence. The review group included a representative from each of four parties with a direct stake in the outcome: the NSW Grains Board, the NSW Farmers Association, the Australian Grain Exporters Association and the Rural Marketing and Supply Association. These stakeholder representatives were unable to reach agreed positions on key issues, so the four Government members were left to determine the review group's majority findings and recommendations. This 'balanced stakeholder' model for constituting review groups may be appropriate for finding compromises between conflicting interests, but such compromises will not always be well grounded in evidence or in the best interests of the wider community.

In conclusion, the Council considers the 1999 review did not establish a robust net community benefit case for the temporary retention of restrictions on barley, canola and sorghum until September 2005.

In its 2002 NCP annual report, the New South Wales Government made a separate case for temporarily retaining these restrictions. It argued that:

- the NSW Grains Board's insolvency had the potential to undermine the State's entire coarse grain industry; and
- introducing arrangements substantially different from the existing legislative framework would have involved significant delays when it needed to act quickly.

The sudden collapse of the NSW Grains Board shortly before the 2000-01 harvest placed grain growers and their associated communities in a very difficult position: the restrictions imposed by the Grain Marketing Act meant they had no immediate buyer for their crops of regulated grain. It remains unclear to the Council, however, why the collapse necessitated the temporary retention of these restrictions until 2005. Other grain marketers operating in and around New South Wales could have been expected to quickly fill the gap left by the NSW Grains Board, much as Qantas and Virgin Blue did in the air transport market when Ansett collapsed. Amending the Act to facilitate such entry might not have been possible immediately, but there may have been

administrative solutions (such as the appointment of authorised agents or buyers) until amending legislation was passed. This was how the Government allowed Grainco Australia to enter the market in place of the NSW Grains Board.

In response to concern from some growers about the temporary retention of these restrictions, the Government stated that this arrangement ensured growers received the money they were owed from the 1999-2000 grain pools. The Council understands that the Government put in place a Treasury Corp loan to allow payments of money owed to growers and that growers are repaying this loan via an authorised buyer fee of \$1.50 per tonne collected by Grainco Australia. Again, it is not clear to the Council why this necessitated the temporary retention of the marketing restrictions until 2005. There appears to be no reason to suggest that multiple authorised buyers could not have collected the levy almost as readily as one buyer.

In light of these questions, the Council considers that New South Wales has not adequately demonstrated that these remaining restrictions are in the public interest, and thus has not met its CPA clause 5 obligations in relation to this legislation. This failure is limiting the availability to barley, sorghum and canola growers of marketing options that may suit some growers better than do those options currently on offer. It is also limiting the growth opportunities for other grain marketers, including private traders who are often based in rural areas.

The Council acknowledges that the New South Wales Government went further in one instance than the 1999 review recommended — that is, the Government legislated the sunset of the barley export marketing restrictions, rather than extending them subject to further review in 2004. The Council also acknowledges that, while the Government considers this establishes a practical way of achieving outcomes that are consistent with NCP principles by September 2005, the New South Wales Cabinet Office has undertaken to consider and respond to suggestions put forward by the Council on bringing forward the September 2005 deadline for the 2003 NCP assessment. This is a positive step. The Council considers however, that responsibility for identifying and assessing options for bringing forward the removal of the remaining marketing monopoly rights appropriately rests with the New South Wales Government, which holds the necessary information about the terms of the arrangement with Grainco Australia.

The economic cost of retaining the remaining restrictions is not trivial. In 2000-01 New South Wales farmers produced an estimated \$654 million of barley, sorghum and canola (ABS 2001b). For illustration, a productivity gain equivalent to 1 per cent of this production would benefit the New South Wales community by around \$6.5 million per year.

The Council does not intend to consider this matter again unless New South Wales moves to meet its CPA clause 5 obligation, either by removing the monopoly powers, or by presenting evidence that clearly demonstrates the extension to September 2005 is in the public interest.

## Victoria

### Review and reform activity

In 1997 the Government of Victoria (with the Government of South Australia) commissioned an independent review by the Centre for International Economics of the *Barley Marketing Act 1993*. The review found, taking into account uncertainty about price sensitivities, the Australian Barley Board had only a 36 per cent chance of earning a premium in export feed barley markets by attempting to price discriminate. It found that any potential for a premium arose solely in the Japanese market. It considered however that even if a premium were available, the Australian Barley Board did not need 'single desk' powers to capture it.

Victoria accepted the review recommendations to:

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

Domestic market reform for feed and malting barley was completed in mid-1999 and the Australian Barley Board transferred to grower ownership as ABB Grain Limited. Victoria passed legislation sunsetting ABB Grain Limited's export monopoly over barley from July 2001. In 2000 the new Victorian Government reconsidered the sunsetting of the barley export 'single desk'. It released a paper that explored three options: extending the arrangements beyond mid-2001; extending the arrangements beyond mid-2001 but broadening exemptions; and sunsetting the arrangements in mid-2001. The Government confirmed on 15 December 2000 that Victoria's barley export restrictions would cease on 30 June 2001. As a result Victorian barley growers have had from 1 July 2001 unrestricted choice as to whom they sell their barley.

So far there has not been a comprehensive evaluation of the impact of deregulation on Victorian barley growers and the wider community. There is considerable anecdotal evidence of benefits, however. Prices offered to barley growers in Victoria have generally exceeded those in New South Wales and South Australia, reportedly prompting some growers in those States to truck their grain to Victorian storages, although there inevitably remains debate about the extent to which deregulation is responsible, versus other factors such as local shortages and freight cost changes. Victorian growers have certainly enjoyed many more risk management options, with a variety of forward cash offers available in addition to traditional pools, allowing them to better align marketing risk with their cropping programs and individual

preferences. Deregulation has also been associated with investment in new more efficient storage and handling facilities in regional areas.

#### Assessment

As reported in the Council's 2001 NCP assessment, Victoria has met its CPA obligation relating to the Barley Marketing Act by allowing it to sunset on 30 June 2001.

## Queensland

#### Review and reform activity

In 1997 the Government of Queensland submitted the *Grain Industry (Restructuring) Act 1993* to review by a panel of industry and Government representatives, including one from Grainco Australia, the operator of the barley marketing monopoly. The Government accepted the review recommendations to remove the domestic market restrictions and to extend the export market restrictions until at least mid-2002. The Act was amended to provide for the barley export restrictions to expire on 30 June 2002. Queensland has confirmed that it will not extend these restrictions.

#### Assessment

Queensland has met its CPA clause 5 obligation relating to the Grain Industry (Restructuring) Act, with the sunseting of the export monopoly on vested grains (barley and wheat) on 30 June 2002.

## Western Australia

#### Review and reform activity

The Western Australian Government initiated a Department of Agriculture review of the *Grain Marketing Act 1975* in 1999. A draft report released later that year recommended that the Government retain the coarse grain export marketing monopoly held by the Grain Pool of Western Australia (Grain Pool) pending the Commonwealth removal of the AWB Limited's wheat export marketing powers. The former Western Australia Government deferred a decision in light of various criticisms of the draft report's analysis.

The current Government returned the Act to review and, on 12 April 2002, released a Department of Agriculture discussion paper on the future of grain marketing regulation in the State. In the discussion paper, the department stated that:

- various studies of grain marketing show that it is difficult to identify conclusively the premiums from the exercise of market power; but
- in the case of the Grain Pool, any such premiums that exist are likely to be small.

The department concluded that removing the grain export monopoly would not be in the best interests of the Western Australian grain industry, however, because growers' investment in the Grain Pool would be threatened if AWB Limited was able to compete in the coarse grain market while enjoying a near-monopoly in the wheat market and because growers would be at an information disadvantage in open markets. The department instead proposed to establish a Grain Licensing Authority, which would:

- license a privatised Grain Pool to export bulk barley, lupins and canola; and
- grant permits for the bulk export of value-added grain products and for bulk grain exports not in competition with the Grain Pool.

In addition, export of grains in bags and small containers would be unrestricted, formalising current practice.

The Government is currently drafting legislation to restrict the export in bulk of prescribed grains (barley, lupins and canola and any other grains that regulations specify to be a prescribed grain) and to allow unrestricted export of all grains in bags and shipping containers. The legislation will establish the Grain Licensing Authority to grant special purpose for export licences under which agents other than the Grain Pool may export prescribed grain in bulk.

The Western Australian Premier wrote to the Council on 1 August 2002 to advise that the Government is 'committed to removal of the monopoly marketing powers of Grain Pool' and will 'take that step immediately the Australian Wheat Board is deregulated'. This statement indicates that the Government considers there is an overall benefit to the Western Australian community from removing all restrictions on grain marketing including for export.

In subsequent discussions, the Minister for Agriculture confirmed that the Government will legislate as soon as possible to remove all restrictions on how growers can market their grain, with date of effect the day after the Commonwealth removes the statutory monopoly held by AWB Limited. The Minister committed to ensuring that the approach in the interim, whereby the Grain Licensing Authority licences purchases of grain for bulk export, would be pro-competitive, with licences granted provided they did not undermine price premiums that would otherwise result from the market power available to the State's single desk.

To facilitate this, the Government undertook to ensure that the Grain Licensing Authority is independent from the Grain Pool and that the Grain

Pool would have not have veto power over the authority's decision to grant a purchase for export licence. In this regard, while the authority may consult with the Grain Pool, it would not refuse the grant of a purchase for export licence to another marketer because the Grain Pool objects to the grant of the licence. It may however reject the grant of a licence if it believes granting the licence would undermine price premiums achieved because of the market power held by the single desk.

## Assessment

The Department of Agriculture's April 2002 discussion paper suggests that the Grain Pool would lose substantial market share (to AWB Limited) and therefore scale economies if its bulk export marketing monopoly is removed while the Commonwealth wheat export restrictions remain. If these arguments are correct, the consequence would be that the Grain Pool could not compete successfully with AWB Limited and others if the arrangements underpinning the Grain Pool monopoly are removed while wheat export marketing restrictions are in place.

The available evidence casts considerable doubt on the strength of the argument that the Grain Pool would not be able to compete with AWB Limited if Western Australia's export marketing arrangements are deregulated. The experience from deregulation of other agricultural markets is that the former statutory monopoly typically remains a major player. Incumbents generally enjoy important advantages over new entrants, such as established supplier and customer relationships, and sunk investment in infrastructure. Factors such as innovative customer service, closer integration with growers and distinctive product lines, all of which tend to be enhanced by market competition, are also important. Further, if the Grain Pool believes that increasing scale is important, then it could seek commercial alliances with other grain industry players, as it is already doing via the proposed merger with Cooperative Bulk Handling Limited and the marketing alliance with ABB Grain Limited (Grain Australia).

The other defining argument in the discussion paper is that growers are unfamiliar with exercising choice in how they should best market their grain and therefore are at risk of being disadvantaged by marketers. Grower inexperience is clearly an important consideration in any decision to remove the restrictions. The better response, however, is to mount an education program for growers, as Victoria did when its marketing restrictions ended. Given such a program, the disciplines of a competitive grain acquisition market on marketers, and the ready availability of price benchmarks, there is every reason to expect growers would adapt readily to the expansion of production and marketing choices that would arise from the removal of the grain export marketing restrictions.

Notwithstanding these questions about the strength of the rationale for retaining Western Australia's grains export monopoly, the Council accepts that the interim course of action proposed by Western Australia will enable parties other than the Grain Pool to export grain in bags and containers and

in bulk (except where price premiums deriving from market power are likely to be affected) in competition with the Grain Pool. The Government's statements suggest that the Grain Licensing Authority will grant a licence for the bulk export of prescribed grains in all cases except where it believes that this would undermine genuine market power available to the single desk. Given this, and the Western Australian Government's commitment to legislate now for the deregulation of its grain export monopoly immediately the Commonwealth deregulates wheat marketing arrangements, the Council accepts that Western Australia has met its NCP obligations for 2002 in relation to grain marketing. The Council will assess Western Australia's new legislation against the Government's commitments (set out above) in the 2003 NCP assessment.

## South Australia

### Review and reform activity

As noted above, in 1997 South Australia commissioned (with Victoria) an independent review of the *Barley Marketing Act 1993* and subsequently accepted the recommendations to remove domestic market restrictions and to retain the barley export monopoly for the shortest possible transition period – determined by both governments to be until 30 June 2001. In September 2000, however, the South Australian Government announced that it would extend the monopoly indefinitely, citing 'overwhelming grower support' and a report for ABB Grain Limited which concluded that the company could extract price premiums in the Japanese barley market. The South Australian Parliament then passed the *Barley Marketing (Miscellaneous) Amendment Act 2000*, which removed the sunset clause but required a review of the barley export monopoly in two years (by November 2002).

### Assessment

The report on which the South Australian Government based its decision to extend the barley export monopoly found that the monopoly returned a \$15 million gain to national economic welfare, including \$11 million from the Japanese market (EconTech 2000). The case made by this report has several important flaws however.

First, the report assumes that import quotas fix the volume of sales to Japan, so competing Australian exporters could not increase sales to that market. No evidence is offered to support this assumption, which is not consistent with information available to the Council. The Council understands that the Japan Food Agency controls barley exports to Japan, but that there are no fixed quotas or contracts. Rather, the agency:

- decides the total import volume each year following discussions with end users;

- discusses prices and volumes annually with suppliers; and
- periodically calls for tenders from those suppliers with which it reached in-principle agreement.

Further, the Council understands that while the agency prefers suppliers with good track records, new suppliers are not excluded and enter the market each year. Any premiums observed in the Japanese barley market are likely to reflect, at least in part, the agency's strong preference for reliability of supply and quality throughout the year. There seems little evidence of the conditions necessary for ABB Grain Limited to have significant power to increase prices.

Second, in evaluating ABB Grain Limited's cost efficiency, the EconTech report compared the company with two other grain export monopolies, rather than with marketers sourcing grain competitively.

Third, the report did not consider alternative, less restrictive marketing arrangements, such as:

- having no 'single export desk', but ABB Grain Limited continuing to sell to the agency on the basis of its track record and grower loyalty; and
- licensing only ABB Grain Limited to export to Japan and allowing competition in exporting to other markets.

Fourth, the EconTech report cannot be considered a properly constituted NCP review. The report was commissioned by ABB Grain Limited, not by the Government. ABB Grain Limited has a clear direct interest in preserving its monopoly and, as a result, may have reduced incentive to seek an independent and objective analysis. Further, the public and other interested parties were not invited to participate in the review through appropriate consultative processes.

The Council considers that the EconTech report provides insufficient support for the proposition that restricting competition in the export marketing of South Australian barley is in the public interest. The most credible review remains that undertaken in 1997 by the Centre for International Economics, which recommended removal of the export monopoly after the shortest possible transition period. By failing to remove the export monopoly, or produce credible evidence that retaining the monopoly is in the public interest, South Australia has failed to meet its CPA clause 5 obligations in relation to the Barley Marketing Act.

Consequently, South Australian barley growers have fewer options for the sale of their output, and alternative export marketers are denied the opportunity to expand. Domestic barley users may also be disadvantaged, if export pooling by ABB Grain Ltd (that is, averaging of export returns) is distorting domestic prices. The net economic cost to the community is uncertain. It could be significant, though: South Australia farmers produced barley valued at \$486 million in 2000-01 (ABS 2001b), accounting for 35 per

cent of Australia's total production. As noted earlier, Victorian growers appear to have benefited from deregulation, with anecdotal evidence of better barley prices, as well as more market risk management options and investment in more efficient storage and handling infrastructure.

The South Australian Government has provided a written commitment to the Council that the review due by November 2002 will be open, independent and robust and with terms of reference consistent with CPA clause 5(9). The Council will therefore finalise the assessment of South Australia's compliance in the 2003 NCP assessment. It will closely examine:

- the 2002 review process, analysis, conclusions and recommendations; and
- the Government's subsequent response, and its implementation of appropriate reform.

For the Council to find in 2003 that South Australia has met its CPA clause 5 obligations, the Government will need to have either:

- legislated to remove the export monopoly at the earliest practical date; or
- clearly and credibly demonstrated that its retention is in the public interest.

**Table 4.3:** Review and reform of legislation regulating wheat, barley and other grain marketing

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Commonwealth	<i>Wheat Marketing Act 1989</i>	Prohibits the export of wheat except with consent of the Wheat Export Authority or by AWBI.	<p>Reviewed was completed in 2000 by an independent review committee. It found that introducing competition was more likely to deliver net benefits than continuing the export controls. It also found, however, that it would be premature to repeal the Act before a relatively short evaluation period of new commercial arrangements. It recommended:</p> <ul style="list-style-type: none"> <li>• retaining the export monopoly until the 2004 review;</li> <li>• incorporating NCP principles into the 2004 review;</li> <li>• developing performance indicators for the 2004 review;</li> <li>• moving from export consents to export licensing;</li> <li>• removing for a three-year trial the requirement that the Wheat Export Authority consult AWBI on consents for export of bagged and containerised wheat; and</li> <li>• removing for a three-year trial the requirement that the Wheat Export Authority obtain written approval from AWBI for the export of durum wheat.</li> </ul>	<p>In April 2001, the Commonwealth announced its acceptance of recommendations, except that it:</p> <ul style="list-style-type: none"> <li>• declined to incorporate NCP principles in the 2004 review;</li> <li>• retained the requirement for consultation with AWBI on consents for export of bagged and containerised wheat; and</li> <li>• retained the requirement for written approval of AWBI for export of durum wheat.</li> </ul> <p>Performance indicators for the 2004 review are yet to be released.</p>	Does not comply with CPA obligations.

*(continued)*

Table 4.3: continued

<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>Grain Marketing Act 1991</i>	Grants monopoly to NSW Grains Board over domestic and export marketing of all barley, sorghum, oats, canola, safflower, sunflower linseed and soybeans grown in the State.	Review was completed in July 1999. It recommended that restrictions on: <ul style="list-style-type: none"> <li>• all domestic sales be removed, by no later than 31 August 2001 for malting barley and by no later than 31 August 2000 for all other grains;</li> <li>• export sales of feed and malting barley remain for only overseas markets where market power or access premiums can be demonstrated, to be reviewed again by 31 August 2004; and</li> <li>• export sales of all other grains be removed by 31 August 2001 for canola and by 31 August 2000 for sorghum, oats, safflowers, linseed and soybeans.</li> </ul>	In October 2000 the Government announced that it would retain restrictions until 2005 on: <ul style="list-style-type: none"> <li>• domestic sales of malting barley;</li> <li>• all export sales of feed and malting barley; and</li> <li>• all export sales of sorghum and canola.</li> </ul> There will be no further review and Grainco Australia acts as agent to the insolvent Grains Board.  An Independent Monitoring Committee will scrutinise prices achieved by Grainco Australia.	Does not comply with CPA obligations.
Victoria	<i>Barley Marketing Act 1993</i>	Granted monopoly to Australian Barley Board over domestic and export marketing of all barley grown in the State.	Review was completed in 1998 jointly with South Australia, recommending that Victoria: <ul style="list-style-type: none"> <li>• remove the domestic barley marketing monopoly;</li> <li>• retain the export barley marketing monopoly for only the 'shortest possible transition period'; and</li> <li>• restructure the Australian Barley Board as a private grower-owned company.</li> </ul>	Act was amended in 1999 to remove monopoly on: <ul style="list-style-type: none"> <li>• domestic barley from 1 July 1999; and</li> <li>• export barley from 1 July 2001.</li> </ul> The board was transferred into grower ownership on 1 July 1999. It has no regulatory powers.	Meets CPA obligations (June 2001).

*(continued)*

Table 4.3: continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Queensland	<i>Grain Industry (Restructuring) Act 1993</i>	Granted monopoly to Grainco Australia Limited over domestic and export marketing of all barley grown in the State.	Review was completed in 1997, recommending that Queensland: <ul style="list-style-type: none"> <li>• remove the domestic monopoly; and</li> <li>• extend the export monopoly until at least mid-2002.</li> </ul>	The Government accepted the recommendations and amended the legislation accordingly, including sunsetting the export monopoly on 30 June 2002.	Meets CPA obligations (June 2002).
Western Australia	<i>Grain Marketing Act 1975</i>	Grants monopoly to the Grain Pool of Western Australia over export marketing of all barley, lupins and canola grown in the State.	The Government has revisited the review begun by previous Government. Discussion paper released in 2002 proposed largely retaining export marketing restrictions under a Grain Licensing Authority. However it did not establish an adequate public interest case.	None. The Government has agreed to remove the Grain Pool's export monopoly upon removal of the AWB's export monopoly.	Does not comply with CPA obligations (June 2002).
South Australia	<i>Barley Marketing Act 1993</i>	Grants monopoly to Australian Barley Board over domestic and export marketing of all barley and oats grown in the State.	As for Victoria, plus removal of the oats marketing monopoly.	As for Victoria. In 2000, the Government removed the export monopoly sunset (thus continuing the export monopoly) and agreed to a further review after two years.	Council to finalise assessment in 2003.
Northern Territory	<i>Grain Marketing Act 1983</i>	Granted monopoly to the Grain Marketing Board over domestic and export marketing of all barley and coarse grains grown in the Territory.	Review was completed in 1997, recommending repeal of the Act.	Act was repealed in 1997.	Meets CPA obligations (June 2001).

## Poultry meat

New South Wales, Victoria, Queensland, Western Australia and South Australia have all regulated the commercial relationships between poultry meat producers and processors. The regulation has generally established an industry committee of producer and processor representatives to negotiate standard contract terms (including fees) for the supply of poultry meat to processors. All relevant States have completed reviews of this legislation.

### New South Wales

#### Review and reform activity

New South Wales submitted its *Poultry Meat Industry Act 1986* to review in 1998 by a group representing the Government, producers and processors. The review group was unable to reach agreement, however, and in March 2001 the Government commissioned Hassall & Associates to undertake a public benefit assessment. According to the Government, this assessment (which it has not released) found that the Act imposes a small net public cost, equivalent to 1 per cent of the retail price of poultry meat.

On 13 November 2001, the Government announced that it would not remove centralised bargaining and that it would amend the Act to exempt centralised bargaining in the industry from challenge under the Commonwealth *Trade Practices Act 1974* (TPA). On 29 May 2002, it introduced the Poultry Meat Industry Amendment (Price Determination) Bill 2002. Under the amended Act, the industry committee, with the agreement of the responsible Minister, continues to determine base growing fees and to approve all agreements between processors and growers. The committee may approve certain agreements, known as 'efficiency incentive agreements', that establish the maximum variations (upwards or downwards) from the relevant base growing fee. The Act also authorises conduct for the purposes of the TPA.

#### Assessment

The amendments made to the Poultry Meat Industry Act introduce additional flexibility into the regulation of commercial relations between New South Wales poultry growers and processors. The Act now allows processors and growers to agree on growing fees that are different from those determined by the industry committee. The Council understands that the amendment brings the Act into line with longstanding practice.

Nevertheless, the Act still restricts competition in the chicken growing services market by allowing the industry committee to approve base fees and to approve all agreements between growers and processors.

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- Base fees are likely to remain a reference point for negotiations between processors and growers, and will apply to poultry deliveries where processors and growers have been unable to agree on the terms of an 'efficiency incentive agreement'.
  - The industry committee may reject some agreements that otherwise would have been made. Further, the disclosure of agreement terms may discourage processors or growers (existing and potential) from reaching innovative agreements.

Neither of these restrictions on competition are features of negotiating arrangements authorised by the ACCC in other States to date. Further, New South Wales has not presented evidence to show that these restrictions are in the public interest. It also has not conducted an open NCP review process, because it has not made available the review committee's report or the report of Hassall & Associates. The Council concludes that New South Wales has not met its CPA clause 5 obligations relating to this Act.

The Government acknowledges that the restrictions are likely to raise the price of poultry meat (New South Wales Government 2002, p. 13). They are also likely to limit or even reduce the size of the poultry growing industry in New South Wales if processors shift capacity elsewhere. An NCP review of Victoria's similar poultry industry legislation estimated a net cost to the community of \$2.8 million (Cousins, Noone and Overall 1999). The New South Wales industry produced \$425 million of poultry meat in 2000-01 (ABS 2001b) and is 50 per cent larger than Victoria's. This indicates that the net cost to the New South Wales community of the retained restrictions on competition may be well in excess of \$3 million per year.

The Council will consider this matter again in the 2003 NCP assessment if the New South Wales Government produces evidence that these restrictions are in the public interest or it further reforms regulation of the industry.

## Victoria

### Review and reform activity

Victoria completed a review of its *Broiler Chicken Industry Act 1978* in November 1999. The review by independent adviser KPMG found that the price determination arrangements impose a net cost on the community as a whole and, moreover, are likely to be in breach of the TPA. It recommended that producers seek authorisation from the Australian Competition and Consumer Commission (ACCC) for collective bargaining arrangements and that the Victorian Government repeal the Act and its regulations.

Subsequently, Marven Poultry, also representing five other Victorian processors, applied to the ACCC for authorisation of collective negotiations by growers with their individual processors. The ACCC granted an authorisation

on 29 June 2001, for five years. The industry committee has ceased to be involved in contract negotiations.

### Assessment

The Council is satisfied that Victoria has met its CPA clause 5 obligation in relation to the Broiler Chicken Industry Act. Victoria's review of the Act was open, independent and robust. It has facilitated the move by processors to negotiate individually with their growers. Victoria has not yet moved to repeal the Act, but no longer applies the provisions for determining the industry-wide growing fee.

## Queensland

### Review and reform activity

Queensland completed a review of its *Chicken Meat Industry Committee Act 1976* in 1997. The review recommended that the Act be amended to:

- shift the industry committee's role from a prescriptive one to facilitative one, whereby it convenes representative groups of producers to negotiate with each processor and refers disputes to mediation or arbitration; and
- specifically prohibits the industry committee from recommending or providing information on growing fees.

The Government agreed in December 1998 to implement the recommendations. The necessary amendments took effect from October 1999.

### Assessment

The Council's 1999 NCP assessment found Queensland's then proposed amendments to the *Chicken Meat Industry Committee Act* were in accord with the recommendations of its review, which appeared to have been open and objective. With the passage of these amendments, Queensland has met its CPA clause 5 obligation in relation to this legislation.

## Western Australia

### Review and reform activity

Western Australia reviewed its *Chicken Meat Industry Act 1977* in 1996. The review by Agriculture Western Australia (now the Department of Agriculture) recommended:

- retaining the industry committee's power to set industry-wide supply fees, subject to:
  - allowing growers to opt out of industry-wide negotiations; and
  - a further review of this restriction being conducted in five years.
- removing controls on entry to the processing and growing sectors.

The then Government endorsed these recommendations and introduced an amendment Bill into Parliament in 2000. The Bill also removed the obligation to enter into a prescribed form of contract. It lapsed at the 2001 state election. The current Government expects to introduce a new Bill in the spring 2002 session of Parliament.

### Assessment

The Council's 1999 NCP assessment stated that Western Australia will have met its CPA clause 5 obligation in relation to the Chicken Meat Industry Act when it passes amendments consistent with the recommendations of the 1996 review. As noted above, Western Australia is still to make such amendments and, therefore, is yet to fulfil its related obligations under the CPA. Nevertheless, the Council understands that Western Australia is committed to making the necessary amendments.

The 1999 NCP assessment also urged Western Australia to consider further amending the Act to facilitate (but not require) collective bargaining of growers with their respective processor rather than with all processors. Restricting competition between processors seems unnecessary if the principal objective of the legislation is to improve the bargaining power of growers. It is also inconsistent with reforms in Victoria, Queensland and South Australia.

The Council will consider Western Australia's reform performance in the 2003 NCP assessment. It will look for robust public interest evidence if industry-wide bargaining is retained.

## South Australia

### Review and reform activity

South Australia reviewed its *Poultry Meat Industry Act 1969* in 1994. The review found that general competition law is sufficient to protect producers and that industry-specific legislation is not required. Subsequently, each of the South Australian processors and their respective grower groups obtained five-year authorisations from the ACCC for collective negotiation of standard contractual arrangements, with provision for growers to 'opt out' and negotiate as individual operators. The Government is currently consulting on

**a proposal to replace the existing inoperative Act with new legislation that provides for collective bargaining of growers with individual processors subject to industry-wide minimum standards and mediation processes. A competition policy analysis of the proposal has been made available and submissions sought by 13 September 2002.**

#### Assessment

**South Australia's Poultry Meat Industry Act, while still not repealed, in practice does not restrict competition because it does not shelter collective bargaining activity from challenge under the TPA. If South Australia brings in new legislation, then the Council will assess the legislation for compliance with CPA clause 5.**

**Table 4.4:** Review and reform of legislation regulating poultry meat marketing

<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>Poultry Meat Industry Act 1986</i>	Prohibits supply of chickens unless under an agreement approved by the industry committee.	First review by government, processor and grower representatives failed to reach agreement. Independent review found the Act imposed a small net cost on the community. No report has been released.	The Act was amended in June 2002 but these amendments essentially retained existing restrictions (and protected the arrangements from challenge under the TPA).	Does not comply with CPA obligations.
Victoria	<i>Broiler Chicken Industry Act 1978</i>	Prohibits supply of chickens unless under an agreement consistent with terms determined by the industry negotiation committee.	Review was completed in 1999, recommending that producers seek ACCC authorisation for collective bargaining and that the Government repeal the Act.	Act has been retained but the industry committee is not to be involved in collective bargaining. The ACCC has authorised grower collective bargaining by processor.	Meets CPA obligations (June 2002).
Queensland	<i>Chicken Meat Industry Committee Act 1976</i>	Prohibited supply of chickens unless under an agreement approved by the industry committee.	Review was completed in 1997, recommending the industry committee convene groups of producers to negotiate with processors, but that it be barred from intervening in negotiations on growing fees.	Recommended amendments were made to the Act in 1999.	Meets CPA obligations (June 2002).

*(continued)*

Table 4.4 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>Chicken Meat Industry Act 1976</i>	Prohibits supply of chickens unless under an agreement approved by the industry committee.  Requires approval of processing plants and growing facilities.	Review was completed in 1996, recommending that the Government retain industry-wide collective bargaining (subject to allowing growers to opt out and to review after five years) and remove controls on grower and processor entry.	The Government intends to amend the Act accordingly in the spring 2002 Parliamentary session.	Council to finalise assessment in 2003.
South Australia	<i>Poultry Meat Industry Act 1969</i>	Prohibits processing of chickens unless from approved farms and under an approved agreement.	Review was completed in 1994, recommending that producers seek ACCC authorisation for collective bargaining with each processor and that the Government repeal the Act.	ACCC authorised grower collective bargaining by processor in 1997. Act has not been repealed but is not operational. The Government is consulting on a proposed new Bill.	Meets CPA obligations (June 2002).  Council to assess any new restrictive legislation in 2003.

## Other products

### Dairy (exports)<sup>3</sup>

The Commonwealth's *Dairy Produce Act 1986* provides for the Australian Dairy Corporation to license the export of dairy products to overseas markets with access restrictions and for the former Domestic Market Support Scheme (which expired on 30 June 2000).

The Commonwealth deferred the review of this Act until early 2002, in light of the significant reforms to domestic dairy markets from 30 June 2000. In February 2002 the Australian Dairy Corporation announced the cessation from June 2002 of restrictions on cheese exports to Japan. It is considering the future of similar restrictions on skim milk powder and butter exports to Japan, and cheese exports to the European Union. The Council understands that review of these restrictions may be deferred again.

The Commonwealth is yet to fulfil its CPA clause 5 obligations in relation to the Dairy Produce Act. Given the developments in the various dairy product export markets, the Council will assess this matter in 2003.

### Eggs

Queensland, Western Australia and Tasmania scheduled for NCP review their legislation establishing producer licensing, production quotas and marketing boards with monopoly powers in the egg industry. The Council understands other jurisdictions removed similar regulatory arrangements well before the commencement of the NCP.

#### Queensland

The Queensland Government decided not to review its *Egg Industry (Restructuring) Act 1993*, allowing it to sunset on 31 December 1998. The Act was not replaced. Vesting and production quotas had been removed two years earlier. The sunseting of the Egg Industry (Restructuring) Act meets Queensland's CPA clause 5 obligations.

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<sup>3</sup> The Council found in the 2001 NCP assessment that State and Territory review and reform of milk marketing arrangements met CPA clause 5 obligations.

## Western Australia

Western Australia's *Marketing of Eggs Act 1945* was scheduled for review in 1999. The Government released a discussion paper in June 2002 that invited submissions on four options:

- the status quo (including a further review in five years);
- removing the marketing monopoly while retaining licensing and production quotas;
- removing all regulation and transferring the board's business to a grower co-operative; or
- removing all regulation and transferring the board's business to a grower-owned company. Submissions to the review closed in July 2002.

Western Australia is still to meet its CPA clause 5 obligations relating to its Marketing of Eggs Act. An open, independent and robust review of Western Australia's statutory egg supply and marketing arrangements is most unlikely to find these to be in the public interest. Given Western Australia's review is now under way, albeit after some delay, the Council will finalise the assessment of Western Australia's review and reform performance in relation to egg supply management and marketing arrangements in 2003.

## Tasmania

Tasmania's *Egg Industry Act 1988* has been reviewed. In May 2001 the Act was amended to allow the marketing board to withdraw from egg processing. The Tasmanian Parliament has considered this year a Bill to replace this Act. The Council is still to confirm what if any restrictions the Bill will retain and the supporting public interest case.

Tasmania is yet to meet its CPA clause 5 obligations related to its Egg Industry Act although its review and reform activity appears to be well progressed. The Council will consider the outcome of Tasmania's review and reform activity again in the 2003 NCP assessment.

## Horticulture

The Commonwealth has regulated the production and export marketing of various horticultural products.

It listed for review under NCP several pieces of legislation related to dried vine fruit:

- the *Dried Vine Fruits Equalization Act 1978*, which equalises returns from the export of dried fruit;

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- the *Dried Sultana Production Underwriting Act 1982*, which underwrites the production of sultanas; and
  - regulations under the *Australian Horticultural Corporation Act 1987*, which restrict the export of dried vine fruit.

The Australian Horticulture Corporation Act itself, and other regulations made under the Act, were not listed for NCP review. These provided for the Australian Horticultural Corporation to control the export of horticultural products, including citrus fruits, pears, apples and stone fruits. These controls operated via licences and/or permissions with attached conditions such as:

- the nomination of import agents;
- prices, quality and grades;
- packaging, labelling and description; and
- the form of consignment, exporter commissions, carriage and insurance arrangements.

These powers are applied to the export of oranges to the United States and the export of peaches and plums to Taiwan.

#### Review and reform activity

The entire dried vine fruit legislation, other than the export control regulations made under the Australian Horticulture Corporation Act, has been repealed without review.

The Australian Horticulture Corporation Act was in late 2000 repealed and replaced by the *Horticulture Marketing and Research and Development Services Act 2000*.<sup>4</sup> The new Act allowed the formation of Horticulture Australia Limited to succeed the Australian Horticulture Corporation, the Horticulture Research and Development Corporation and the Australian Dried Fruits Board. An agreement made under the Act between the Commonwealth and Horticulture Australia Limited provides that any proposals by the company to impose new export controls must show a net public benefit and meet minimum standards for consultation. Such proposals may only be approved by the Commonwealth Department of Agriculture, Fisheries and Forestry after it has prepared a regulation impact statement and obtained clearance from the ACCC on trade practices compliance. Horticulture Australia Limited must report on the performance of export controls annually and, with the department, review the powers under NCP principles every three years.

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<sup>4</sup> The new Act also replaces the *Horticultural Research and Development Corporation Act 1987*, which concerned the provision of research and development services to the horticulture industry.

The Act itself was subject to the preparation of a regulation impact statement. The statement, drawing on a 1999 review by a government-industry working party, identified four alternative conditions under which the horticulture export control powers may provide a net community benefit, and gave the controls over orange exports to the United States as an example. This statement was however assessed as inadequate by the Office of Regulation Review, because in its view the independent economic analysis obtained by the review showed that in most cases the identified conditions had not been met.

The export control powers and process for applying these was subject to further scrutiny this year by the Productivity Commission in its recent inquiry into the citrus industry (PC 2002a). The Productivity Commission inquiry was critical of the arrangements.

- It questioned whether the controls on orange exports to the United States are in the interests of growers or the community more generally.
- It highlighted that the key question in reviewing export controls is whether export control arrangements generate additional benefits for Australian growers in general beyond those achievable by other means — such as multiple agents, voluntary cooperation, or well informed growers and exporters making commercial business decisions.
- It argued that Horticulture Australia Limited could not be regarded as a suitably independent body to review export controls.

It recommended that future reviews of export control arrangements should be conducted in an independent and transparent manner, including effective consultation with all interested parties. Assessment criteria and the results of the review should be publicly available, together with the reasons for recommendations.

All regulations made under the former Act continue for a two-year transitional period (ending 31 January 2003) and must be reviewed before they can be extended. The Commonwealth is yet to complete its review of the dried vine fruit export control regulations.

## Assessment

The Council considers that the Commonwealth has not met its CPA clause 5 obligations to review and, where appropriate, reform the dried vine fruit export control regulations made under the now repealed Australian Horticultural Corporation Act. This might have denied dried vine fruit growers and exporters opportunities to export more fruit and to develop new and profitable export links. The Council will reconsider the review and reform of dried vine fruit export control regulations in 2003 by which time these will have expired or been extended.

With the Horticulture Marketing and Research and Development Services Act the arrangements for making and reviewing horticultural export controls are much improved. Nevertheless the Productivity Commission has identified some remaining weaknesses in these arrangements. Addressing these weaknesses will reduce the chance in the future that controls are imposed or retained where this is not in the public interest.

## Potatoes

The growing and marketing of potatoes in Western Australia is controlled under the *Marketing of Potatoes Act 1946*. The Act establishes the Potato Marketing Corporation, reserves to it a monopoly over the domestic wholesale marketing of all potatoes grown in the State for fresh consumption, and empowers it to licence growing areas.

### Review and reform activity

The former Western Australian Government commissioned the Department of Agriculture to review the Act in 1998. The review recommended that the Government retain the domestic monopoly held by the Potato Marketing Corporation. In response to criticisms of the review the then Government asked the Department to re-examine its recommendations. In May 2002 the Department released a discussion paper inviting submissions on the future regulation of the industry. It proposed two options: the status quo and development of an industry based model which separates the current regulatory and commercial functions of the Potato Marketing Corporation. Under the industry model, industry regulation would be conducted within government (the Department of Agriculture is the generic regulator for several industries) while commercial activity would be undertaken by a private entity such as a grower owned cooperative. The model proposed in the discussion paper would retain for five years industry-wide controls on potato supply and minimum price setting (Department of Agriculture, Western Australia 2002, pp. 36-37).

### Assessment

The current review, if it is sufficiently robust, is most unlikely to find that the existing supply management and market monopoly arrangements are in the public interest. The discussion paper asserts that consumers benefit through more stable retail pricing but does not acknowledge that consumers are accustomed to regular price changes in other fresh commodities and hence are unlikely to place more than a small value on this benefit.

In contrast the costs of the arrangements may be substantial. As acknowledged by the discussion paper, prices paid by Western Australian consumers for fresh potatoes generally exceed comparable prices in most other States and Territories, and Western Australian consumers have less

choice in potato varieties. There is no evidence to support the paper's claim that retail prices would not fall if the arrangements were removed. Indeed, removal of similar arrangements in the fresh milk industry saw supermarket plain milk prices drop by 22 cents per litre (after the Commonwealth levy of 11 cents per litre to recover the cost of adjustment assistance). Moreover, supermarket milk sales margins dropped by 19 per cent (ACCC 2001b).

Existing growers clearly enjoy higher returns because of these arrangements — as evidenced by the trading of production quota at \$6000–7000 per hectare. On the other hand, the quota system seems to encourage more costly production to increase area yields. According to the discussion paper for example Western Australian growers spend three times more on fertiliser than do South Australian growers. The quota system also makes it difficult for growers to expand production area or to switch between crops to suit their farming program.

In the Council's view, the future policy directions proposed in the discussion paper raise questions about whether the Government is complying with its CPA clause 5 obligations in relation to the regulation of potato supply and marketing. Even if the Government decided to remove the domestic monopoly held by the Potato Marketing Corporation, the scenario proposed in the Department of Agriculture discussion paper suggests that full removal may not occur for five years. The delay in removal would mean further substantial costs for consumers and may divert grower effort from adjusting to the new market environment to seeking to overturn a reform program. The delay is unlikely to be in the public interest because there appear to be feasible alternatives; the Government could assist growers to adjust (where assistance is justified) without extending the supply and marketing arrangements for more than a minimum practical implementation period. Possible alternatives include:

- providing growers with expertise in business planning and developing new supply and marketing structures;
- providing grants or loans to growers who choose to exit the industry and growers who remain to adopt new technology or capture scale economies;
- transferring marketing assets to grower ownership.

In preparing this assessment the Council raised its concerns with the Western Australian Government and sought the Government's commitment to examining earlier removal of the supply management and marketing arrangements, with adjustment assistance for growers as appropriate. In response to the Council, the Western Australian Premier noted that the regulation of potato supply and marketing arrangements are currently under review. The Council considers that Western Australia has not met its CPA clause 5 obligations relating to the Marketing of Potatoes Act. The Council will consider this matter further in the 2003 NCP assessment.

## Rice

The *Marketing of Primary Products Act 1983* establishes a monopoly, conferred on the New South Wales Rice Marketing Board (NSWRMB), over the domestic and export marketing of rice grown in New South Wales. The board delegates its marketing functions to the Ricegrowers Co-operative Limited (RCL) under an exclusive licensing arrangement. The co-operative also controls the production, storage and milling of rice via its six milling plants.

### Review and reform activity

In 1995 New South Wales commissioned a Government/industry review of its rice marketing arrangements. The review recommended removing the NSWRMB's monopoly over domestic marketing, but retaining the export monopoly. It proposed that the Government achieve this change by repealing the State-based arrangements and establishing an export monopoly under Commonwealth jurisdiction. In April 1996 the Government extended the existing regulatory arrangements until 5 January 2004 arguing that:

- export premiums significantly exceed domestic costs;
- export licensing by the Commonwealth is unnecessary as most rice is produced in New South Wales; and
- alternative State-based arrangements are unlikely to be feasible.

The Council's 1997 NCP assessment and 1998 supplementary NCP assessment found that New South Wales had not implemented the recommendations of its review and, therefore, had not met its CPA clause 5 obligations in relation to domestic rice marketing arrangements. Following this assessment, a working party comprising Commonwealth and New South Wales officials, industry representatives and Council staff was established to examine Commonwealth-based options for ensuring a 'single export desk', while removing the domestic rice market monopoly.

In January 1999 the working party recommended a preferred model to the Commonwealth Government. The model included the Commonwealth's creation of a rice export authority to manage the 'single desk', with RCL holding an automatic export right for three to five years. Under the model, third parties would be able to seek export licences where this arrangement does not diminish the benefits of the 'single desk'.

In April 1999 the New South Wales Premier' agreed to the model, in-principle, and subject to it:

- being feasible, practical and not jeopardising export premiums;

- taking into account industry arguments on the need for a transition period before implementation and a further period during which RCL would hold an exclusive export license; and
- being agreed to by all other States.

The Premier also reserved the right to retain the existing arrangements to protect export premiums if these conditions are not satisfactorily met.

Following this the Commonwealth and New South Wales Governments further developed the model. At the time of the Council's 2000 supplementary assessment, however, the New South Wales Government had not responded to a refined proposal from the Commonwealth. The Council considered this to be insufficient progress and recommended withholding part of the 2000-01 NCP payments otherwise due to New South Wales. On 31 August 2000 the Council was advised that the New South Wales Premier accepted the Commonwealth's proposal, subject to two minor qualifications. Consequently, the Council withdrew its recommendation to withhold 2000-01 NCP payments, but indicated that it would revisit the matter in later assessments.

The model has since been further developed and, on 27 March 2001, New South Wales agreed to the Commonwealth commencing consultation on the model with other States and Territories. New South Wales requested that the consultations be on the basis of:

- the model being in place for three to five years; and
- the Ricegrowers Co-operative Limited holding, for a transitional period, a veto over rice exports by other parties.

The Commonwealth began formal consultations with other States and Territories in May 2002. At the time of reporting, these consultations had not concluded.

## Assessment

New South Wales is yet to fulfil its CPA clause 5 obligations relating to domestic rice marketing. This is partly because of the time taken by New South Wales in agreeing to an approach to reform; more recently, there have been delays by the Commonwealth in starting consultations with the other States and Territories. The NCP review was completed almost seven years ago and yet the recommended deregulation of domestic rice marketing still has not occurred. The review estimated the annual cost to domestic consumers of rice at \$2–12 million per year (New South Wales Government 1995), equivalent to \$14–84 million in the seven years since the review. It has also seriously disadvantaged those growers who wish to make their own processing and marketing decisions, particularly several growers of organic rice.

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The Council will consider this matter again in the 2003 NCP assessment, when it expects that either:

- the Commonwealth will have passed legislation establishing the rice export authority, and New South Wales will have repealed the Marketing of Primary Products Act insofar as it regulates rice marketing; or
- New South Wales will have deregulated the domestic marketing of rice, via a scheme under s. 57 of the Act for granting exemptions from vesting.

## Sugar

Queensland's *Sugar Industry Act 1991* provided for a monopoly marketer of raw sugar produced in the State — that is, the Queensland Sugar Corporation. The Act also extensively regulated commercial arrangements between cane growers and millers. The Commonwealth imposed a tariff of \$55 per tonne that effectively excluded sugar imports.

### Review and reform activity

In 1995 the Commonwealth and Queensland governments commissioned a working party of government, grower, miller, marketer and user representatives to review the Act and the sugar import tariff. The working party reported in July 1996, recommending that:

- the Queensland Government:
  - retain the domestic and export monopoly, subject to the pricing of domestic sales at export price parity;
  - permit growers to negotiate individual agreements with mills and transfer their supply to other mills, when collective supply agreements expire;
  - place a 10-year moratorium on further review of the marketing arrangements; and
- the Commonwealth Government remove the tariff on raw sugar imports.

The Queensland and Commonwealth Governments endorsed the recommendations. In July 1997 the Commonwealth removed the import tariff and the Corporation priced its domestic sales at export price parity. These moves, along with falls in world sugar prices, led domestic prices to fall by more than \$200 per tonne.

In November 1999 the Queensland Parliament passed the *Sugar Industry Act 1999*, which encapsulated the regulatory changes agreed with the industry and repealed the Sugar Industry Act 1991. The new Act was amended in June

2000 by the *Sugar Industry Amendment Act 2000*, which introduced further structural changes for the industry. The most important changes were:

- the transfer of the Queensland Sugar Corporation's marketing assets and liabilities to the producer-owned Queensland Sugar Limited;
- the establishment of the Sugar Authority to monitor the performance of Queensland Sugar Limited and to assume its monopoly role if the industry gives up control of the company;
- the establishment of a review of the sugar vesting arrangements by no later than 1 December 2006 (or earlier if the company requests) for completion by 31 December 2007;
- the clarification that a cane grower is able to move from a collective supply agreement to an individual agreement; and
- the transfer of the bulk sugar terminals to Sugar Terminals Limited and the distribution of shares in this company to eligible growers and millers.

Since these changes, the sugar industry has faced several seasons of much reduced returns due to low world sugar prices, poor seasonal conditions and cane disease. Notwithstanding the substantial financial and other assistance made available to cane growers by the Commonwealth and Queensland governments, the prospects for better returns look poor without substantial gains in industry productivity. These governments are currently exploring with the industry how best to adjust to international market conditions, drawing on an independent assessment prepared for the Commonwealth by Mr Clive Hildebrand, Chair of the Sugar Research and Development Corporation. Options include greater devolution to local mill areas, facilitating aggregation of sugar farms and seeking diversification of products.

## Assessment

With the passage of the Sugar Industry Act and subsequent amendments, the Queensland Government has substantively implemented the relevant recommendations of the 1996 Sugar Industry Review Working Party. The one notable departure from the review recommendations was highlighted in the 1999 NCP assessment. The Act restricts the ability of growers to transfer cane supply between mills. Such transfers can occur only with the agreement of both cane production boards — that is, the grower and mill representatives for both the grower's existing and intended mills. The review recommended that such transfers require the consent of only the cane production board for the intended mill. The Queensland Government argues that this is only a minor departure and is in the public interest. It notes that mills and growers are highly interdependent and that maximising returns to both requires precise forward programming of cane delivery and processing.

The Council acknowledges the strong interdependence between growers and mills. In the absence of specific regulation, private contractual arrangements would evolve that would require a grower at least to give due notice (perhaps one or two seasons) of their intention to withdraw supply, whether to transfer to another mill or to change land use. The Council accepts that this departure from the review recommendation is unlikely to have a practical restriction on competition. The Council concludes that Queensland has met its CPA clause 5 obligations relating to the regulation of the sugar industry.

The transfer of the marketing assets and liabilities of the former Queensland Sugar Corporation to Queensland Sugar Limited, and the transfer of the bulk sugar terminals to Sugar Terminals Limited are relevant to CPA clause 4. This clause obliges governments, before privatising a public monopoly, to remove from it any industry regulation functions and to undertake other structural reforms necessary to establish effective competition where these are in the public interest.

The Queensland Government has met its CPA clause 4 obligation in relation to the privatisation of the Queensland Sugar Corporation. In particular, the regulatory functions of the corporation, retained by the Sugar Industry Act 1999, have been devolved to either local cane production boards or the Sugar Industry Commissioner. Queensland Sugar Limited also continues to be subject to the export parity pricing rule while it retains a State monopoly on domestic raw sugar sales.

The privatisation of the bulk sugar terminals did not affect any regulatory functions. While Bulk Sugar Terminals Limited controls all sugar terminals in Queensland, the interests of growers and mills in its pricing and service standards are addressed through their joint ownership of the company.

**Table 4.5:** Review and reform of legislating regulating other agricultural product markets

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Commonwealth	<i>Dairy Produce Act 1986</i>	Provides for licensing of dairy exports and support for domestic manufacture of dairy products.	Australian Dairy Corporation is reviewing the export licensing arrangements but completion of this review may be delayed.	The domestic market support scheme expired on 30 June 2000.  Licensing of cheese exports to Japan ends on 30 June 2002.	Council to finalise assessment in 2003.
	<i>Dried Vine Fruits Equalization Act 1978</i> <i>Dried Sultana Production Underwriting Act 1982</i> <i>Dried vine fruit export control regulations under the Australian Horticulture Corporation Act 1987</i>	Equalises returns from the export of dried vine fruit.  Underwrites production of sultanas.  Restrict the export of dried vine fruits.	The dried vine fruit export control regulations expire in 2003 (under the transitional arrangements associated with the replacement of the Act by the Horticulture Marketing and Research and Development Services Act 2000). The Commonwealth intends to review whether these should be extended in some form.  The Productivity Commission recently proposed further improvements to the way such export controls are made and reviewed.	The Acts were repealed without review.	Council to finalise assessment in 2003.

*(continued)*

Table 4.5 continued

<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>Marketing of Primary Products Act 1983</i>	Grants monopoly granted to the Rice Marketing Board over domestic and export marketing of all rice grown in the State.	Review was completed in 1995 by a government/industry panel. It recommended retaining the export monopoly under Commonwealth jurisdiction and removing the domestic monopoly (and State legislation).	With New South Wales's conditional agreement the Commonwealth is consulting other States on a proposal to establish a Rice Export Authority to control rice exports, with Ricegrowers Co-operative Limited to hold an export right for 3–5 years, and licensing of noncompeting exports.	Council to finalise assessment in 2003.
Queensland	<i>Sugar Industry Act 1991</i>	Grants monopoly to the Queensland Sugar Corporation over domestic and export marketing of all sugar produced in the State.  Local boards control cane production areas and the allocation of cane to mills.	Review was completed in 1996 by a government/industry panel. It recommended: <ul style="list-style-type: none"> <li>• retaining the domestic and export monopolies subject to export parity pricing of domestic sales;</li> <li>• permitting growers to negotiate individually with mills once collective agreements expire; and</li> <li>• removing the Commonwealth's sugar tariff.</li> </ul>	In July 1997 the tariff was removed and export parity pricing was introduced. In November 1999 the <i>Sugar Industry Act 1999</i> was passed. This and subsequent amendments allow some scope for growers to negotiate individually with mills. New Act also brought several structural reforms of the corporation and bulk sugar terminals.	Meets CPA obligations (clauses 4 and 5).
	<i>Egg Industry (Restructuring) Act 1993</i>	Producer licensing. Production quotas. Vesting and marketing monopoly.	Not reviewed.	The Act sunsetted on 31 December 1998.	Meets CPA obligations (June 2002).

*(continued)*

Table 4.5 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>Marketing of Eggs Act 1945</i>	Producer licensing. Production quotas. Vesting and marketing monopoly.	The Department of Agriculture released a discussion paper in June 2002.	None.	Council to finalise assessment in 2003.
	<i>Marketing of Potatoes Act 1946</i>	Producer licensing. Production quotas. Vesting and domestic marketing monopoly.	A review in 1999 by the Dept of Agriculture recommended retaining the domestic marketing monopoly.  The review was restarted in 2002 and a discussion paper released in May.	None.  Neither option for industry regulation proposed by the discussion paper is sufficient for CPA clause 5 compliance.	Does not comply with CPA obligations (June 2002).
Tasmania	<i>Egg Industry Act 1988</i>	Producer licensing. Production quotas. Vesting and marketing monopoly.	Review completed.	Marketing board withdrew from egg processing in 2001. A Bill to replace this Act considered by Parliament in 2002. Insufficient information on what if any restrictions will be retained.	Council to finalise assessment in 2003.

## Agriculture-related products and services

This section considers governments' progress in fulfilling NCP obligations relating to legislation review and reform (CPA clause 5) and structural reform (CPA clause 4) in the agriculture-related activities of:

- agricultural and veterinary (agvet) chemicals;
- bulk grain handling and storage;
- food;
- quarantine and food exports; and
- veterinary services.

### Agricultural and veterinary chemicals

Agricultural chemicals are chemicals used to protect crops against pests, to inhibit weeds and to modify plant development. Veterinary chemicals are applied to animals to prevent or treat disease or injury, or to modify physiological development.

### Legislative restrictions on competition

Agvet chemicals are regulated under Commonwealth, State and Territory legislation. These laws establish the national registration scheme for these chemicals, which covers the evaluation, registration, handling and control of agvet chemicals up to the point of retail sale. The National Registration Authority administers the scheme. The Commonwealth Acts establishing these arrangements are the *Agricultural and Veterinary Chemicals (Administration) Act 1992* and the *Agricultural and Veterinary Chemicals Code Act 1994*.

Beyond the point of sale, these chemicals are regulated by 'control of use' legislation. This legislation typically covers matters such as the licensing of chemical spraying contractors, aerial spraying and permits allowing use for purposes other than those for which a product is registered (that is, off-label purposes).

## Regulating in the public interest

Agvet chemicals pose a variety of serious risks if not supplied or used with due care, including risks to public health, worker health, the environment, animal welfare and international trade. Chemical suppliers generally have strong incentives to produce chemicals safely, to ensure they are fit-for-purpose and to make consumers aware of how to use the products safely. Users too generally have strong incentives to choose chemicals that are fit-for-purpose and to use them safely. Less than optimal care may result, however, where third parties bear some costs of chemical supply or use and encounter practical difficulties in forcing their compensation by the chemical supplier or user at fault. Governments therefore endeavour through regulation to deliver a level of chemical safety that is acceptable to the community.

Chemical safety regulation is not costless, however. It imposes costs on businesses by requiring, for example, specified premises design and equipment, staff training, and up-to-date knowledge of changes in regulation. These and other costs are ultimately passed on to consumers through higher prices and reduced choices. Chemical regulation should therefore:

- intervene only on the basis of sound science and risk assessment;
- hold chemical suppliers and users responsible for safety, by setting simple and clear performance standards and allowing suppliers/users the freedom to choose how to meet these standards; and
- unless necessary to protect health:
  - not impose significant barriers to entry by suppliers into chemical markets;
  - not impose different regulatory burdens on suppliers of competing chemical products; and
  - allow competition in the delivery of chemical safety services such as assessment and analysis.

## Review and reform activity

### National chemical registration scheme

In 1999, on behalf of all governments, Victoria coordinated a review of the national registration scheme for agvet chemicals. The independent reviewers recommended:

- retaining the National Registration Authority as the sole registration body;

- introducing a low cost registration process for low risk chemicals;
- making contestable the assessment services purchased by the National Registration Authority;
- limiting the National Registration Authority's efficacy assessments to determining that labelling is 'true' (removing the 'and appropriate' criterion);
- allowing the National Registration Authority to continue to operate on a cost-recovery basis, but simplifying the means of determining levies and fees;
- retaining the licensing of veterinary chemical manufacturers but removing the reserve powers for the licensing of agricultural chemical manufacturers until the case for such licensing is made; and
- modifying the compensation arrangements for third party access to chemical assessment data, consistent with the principles contained in part IIIA of the *Trade Practices Act 1974*.

In January 2000 agriculture and resource management Ministers agreed to an intergovernmental response to the review. The response accepted all recommendations except:

- removing the provision to license agricultural chemical manufacturers. This provision was retained, but with manufacturers exempted, pending further review by the Commonwealth; and
- limiting the efficacy review to whether labelling is true. This recommendation is believed to be inconsistent with minimising chemical use and the associated risks.

Working groups were established to progress the following issues:

- how best to regulate low risk chemicals. A Bill has now been prepared to amend the Agricultural and Veterinary Chemicals Code Act, and the Commonwealth expects to introduce it this year;
- how to monitor the quality of assessment services that the National Registration Authority purchases from alternative providers. A report is expected to be finalised in 2002 for consideration by the Primary Industries Ministerial Council; and
- whether licensing of agricultural chemical manufacturers is in the public interest. A report is expected to be finalised in 2002 for consideration by the Primary Industries Ministerial Council.

In addition, the Commonwealth undertook to include data protection issues in a wider review of data protection.

## 'Control of use' legislation

The national review coordinated by Victoria also examined 'control of use' legislation in Victoria, Queensland, Western Australia and Tasmania. The review recommended that these governments:

- establish a taskforce to examine 'control of use' arrangements and develop nationally consistent approach to 'off-label' use;
- retain the exemption of veterinarians from provisions relating to the supply and use of veterinary chemicals, but remove the exemption in relation to agricultural chemicals; and
- retain minimum necessary licensing (business and occupational) for agricultural chemical spraying.

Ministers in these jurisdictions established a Control of Use Taskforce as recommended. The taskforce agreed to remove the veterinarian exemption from provisions on agricultural chemicals and to reform licensing of agricultural chemical sprayers. Victoria amended its legislation accordingly; Queensland, Western Australia and Tasmania intend to do so in 2002. In relation to 'off-label' use, the taskforce agreed that more data are needed to adequately monitor the success of chemical risk management.

New South Wales completed in 1998 a single review of its *Fertilisers Act 1985*, *Stock Foods Act 1940*, *Stock Medicines Act 1989*, *Stock (Chemical Residues) Act 1975* and part 7 of the *Pesticides Act 1978*. The review recommended that the Government implement the following changes.

- Fertilisers Act;
  - remove brand name registration, various composition standards and the restriction on representations made in the sale of various organic fertilisers.
  - retain heavy metal content limits and content labelling requirements.
- Stock Foods Act;
  - retain content labelling and foreign ingredient content limits.
- Stock Medicines Act
  - retain restrictions on the possession and use of certain stock medicines, and mandatory disclosure upon the sale of treated stock and stock food; and
  - review advertising restrictions following completion of the national review of drugs, poisons and controlled substances legislation.
- Stock (Chemical Residues) Act;

- 
- retain all existing restrictions that relate to detecting and controlling chemical-affected stock, fodder and land.
  - Part 7 of the Pesticides Act;
    - expand certain powers to provide for consistent controls on chemical-affected plants and animals.

The review also recommended that the Government remove some provisions that merely duplicate provisions in other legislation, and that it consider amalgamating some or all of the Acts to ensure greater regulatory consistency. In 1999 New South Wales responded by amending the Fertilisers Act as recommended and by replacing the Pesticides Act with the *Pesticides Act 1999* with provisions as recommended. Further, in April 2002 the Government agreed in principle to amalgamate the Fertilisers Act, the Stock Foods Act and the Stock (Chemical Residues) Act, to exclude certain restrictions from the new Act and to focus the new Act on addressing risks to human health, trade, the environment and animal welfare.

South Australia intends to replace its *Agricultural Chemicals Act 1955*, *Stock Foods Act 1941* and *Stock Medicines Act 1939* with new legislation. In 1998 it commissioned an independent review of the proposed legislation which found that all proposed restrictions were in the public interest. The South Australian Government introduced the Agricultural and Veterinary Products (Control of Use) Bill in 2001, but the Bill lapsed at the last State election. A virtually identical Bill has been introduced and proclamation is expected by the end of 2002.

The ACT replaced its *Pesticides Act 1989* with the *Environment Protection Act 1997*. The latter Act:

- prohibits 'off-label' use of registered chemicals and any use of unregistered chemicals, unless under a permit issued by the National Registration Authority; and
- prohibits the commercial use of registered chemicals unless authorised by Environment ACT.

The ACT reviewed the *Fertilizers Act 1904* (NSW) which applies to the ACT. The Act prohibits the sale of fertilisers without the vendor providing a statement as to the fertilisers' constituents. The review recommended that the Government retain the Act without change.

The Northern Territory has not listed any 'control of use' legislation for review.

## Assessment

### National chemical registration scheme

The following issues from the review of the national registration scheme remain outstanding:

- licensing of agricultural chemical manufacturers;
- regulation of low risk chemicals;
- contestability of chemical assessment services; and
- compensation for third party access to chemical assessment data.

While governments are continuing to make progress in their review and reform activity, they are still to fulfil their related CPA clause 5 obligations. The Council will consider all jurisdictions' compliance in this area in 2003.

The Council has identified one key public interest question, which arises from the Ministers' decision to retain, as part of the registration process, an assessment of whether the efficacy claimed by a supplier is appropriate. This appropriateness assessment involves the National Registration Authority deciding, for example, what flea kill rate a flea collar should achieve within a certain period after application. Governments argue that this appropriateness assessment reduces health and environmental risks by avoiding the use of chemicals with inadequate efficacy. The Council understands, however, that other measures control the health and environmental risks arising from chemical use. It is also not clear to the Council why consumers are unable to judge the efficacy they prefer. Finally, the Council is concerned that the assessment may raise the cost of chemicals and reduce consumer choice. The Council therefore seeks from governments a more detailed explanation of the assessment's benefits, costs and alternatives in the context of the 2003 NCP assessment.

### 'Control of use' legislation

Queensland, Western Australia and Tasmania have yet to fulfil their CPA obligations arising from 'control of use' legislation because they are still to implement the recommended reforms.

Victoria has implemented the recommended reforms with one exception – it has retained a licence condition that aerial sprayers hold an approved insurance policy. Mandatory insurance restricts entry to the market and may raise the price of services. The Council seeks evidence from Victoria that this additional restriction is in the public interest. New South Wales has largely met its CPA clause 5 obligations arising from its 'control of use' legislation. The advertising restrictions in the Stock Medicines Act are the only significant outstanding matter.

**South Australia is close to completing the reform of its 'control of use' legislation.**

**The ACT has implemented reform but the Council needs further information on the authorisation system before it can assess whether the Government has fulfilled its obligations. In particular, the Council wishes to understand how the system varies, if at all, from the licensing arrangements recommended by the review that Victoria coordinated.**

**The Council needs the Northern Territory to identify any 'control of use' legislation that significantly restricts competition and, if any exists, how the Government is fulfilling its CPA obligations.**

**Acknowledging that governments are continuing to progress their CPA clause 5 obligations in this area, the Council will consider the outstanding matters identified above in 2003.**

**Table 4.6:** Review and reform of legislation regulating agvet chemicals

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Commonwealth	<i>Agricultural and Veterinary Chemicals Code Act 1994</i>	<p>Prohibits chemicals from being supplied or held unless approved or exempt.</p> <p>Requires approval of chemicals solely by the National Registration Authority.</p> <p>Imposes same approval costs on low risk chemicals as on high risk chemicals.</p> <p>Provides for assessment services purchased from only certain authorities.</p> <p>Prohibits chemicals from being approved unless the National Registration Authority is satisfied of appropriate efficacy.</p> <p>Provides for licensing of chemical manufacturers.</p> <p>Provides for data protected from rivals unless compensation is paid.</p>	<p>Review was completed in 1999 by review team of economic and legal consultants. The review recommended:</p> <ul style="list-style-type: none"> <li>• retaining the monopoly on approval of chemicals;</li> <li>• lowering regulatory costs for low risk chemicals;</li> <li>• including principles in the Code to guide the inclusion/exclusion of chemicals in the national registration scheme;</li> <li>• accepting alternative suppliers of assessment services;</li> <li>• limiting the efficacy review to the truth of the claimed efficacy;</li> <li>• recovering National Registration Authority costs via a simple flat rate sales levy and cost-reflective application fees;</li> <li>• retaining licensing of veterinary chemical manufacturers;</li> <li>• removing licensing of agricultural chemical manufacturers until a case is made; and</li> <li>• applying TPA third party access pricing to data protection provisions.</li> </ul>	<p>Intergovernmental response to review was completed in 2000. It supported all recommendations except:</p> <ul style="list-style-type: none"> <li>• removing provision to licensing of agricultural chemical manufacturers; and</li> <li>• limiting the efficacy review.</li> </ul> <p>Amendments to establish a low cost regulatory system for low risk agvet chemicals are expected to be made in 2002.</p> <p>Further reviews of assessment services and licensing of agricultural chemical manufacturers are to be completed in 2002.</p> <p>Data protection is to be considered in a wider review.</p>	Council to finalise assessment in 2003.

*(continued)*

Table 4.6 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Commonwealth (continued)	<i>Agricultural and Veterinary Chemicals (Administration) Act 1992</i>	Prohibits chemicals from being imported unless approved or exempt.  Requires minimum qualifications and experience for analysts.  Sets fees and levies that impose an entry barrier and discriminate among firms.	See <i>Agricultural and Veterinary Chemicals Code Act 1994</i> above.	See <i>Agricultural and Veterinary Chemicals Code Act 1994</i> above.	Council to finalise assessment in 2003.
New South Wales	<i>Agriculture and Veterinary Chemicals (New South Wales) Act 1994</i>	Imports the Agricultural and Veterinary Chemicals Code into State jurisdiction.	See Commonwealth <i>Agricultural and Veterinary Chemicals Code Act 1994</i> above.	See Commonwealth <i>Agricultural and Veterinary Chemicals Code Act 1994</i> above.	Council to finalise assessment in 2003.
	<i>Fertilisers Act 1985</i>	Provides for registration of brand names, composition standards and labelling requirements.	Review was completed in 1998 (with other State agvet legislation) by a government/industry panel. It recommended: <ul style="list-style-type: none"> <li>• removing brand name registration and minimum content requirements; and</li> <li>• retaining heavy metal limits and labelling requirements.</li> </ul>	Act was amended in November 1999 as recommended.	Meets CPA obligations (June 2002).

*(continued)*

Table 4.6 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
New South Wales Wales (continued)	<i>Pesticides Act 1978</i> (part 7)	Controls the sale, supply, use and possession of pesticides, the aerial application of pesticides and residue in foodstuffs.	1998 review recommended expanding certain powers to provide for consistent controls on chemical-affected plants and animals.	Act was repealed and replaced by the Pesticides Act 1999, in line with the recommendations.	Meets CPA obligations (June 2002).
	<i>Stock (Chemical Residues) Act 1975</i>	Imposes restrictions on chemically affected stock (for example, on its sale, movement or destruction).	1998 review recommended retaining all existing restrictions that relate to detecting and controlling chemical-affected stock and controlling affected stock fodder and land.	No NCP reform is required.  This Act and the <i>Fertilisers Act 1985</i> and <i>Stock Foods Act 1940</i> are to be replaced by new legislation.	Meets CPA obligations (June 2002).
	<i>Stock Foods Act 1940</i>	Controls labelling. Limits foreign ingredients.	1998 review recommended retaining content labelling and foreign ingredient content limits.	See <i>Stock (Chemical Residues) Act 1975</i> above.	Meets CPA obligations (June 2002).
	<i>Stock Medicines Act 1989</i>	Prohibits unregistered chemicals from being held or used on food-producing stock unless prescribed by a veterinary surgeon.  Requires minimum qualifications and experience for analysts.  Restricts advertising.	1998 review recommended:  <ul style="list-style-type: none"> <li>• retaining restrictions on the possession and use of certain stock medicines and mandatory disclosure of sale of treated stock and stock food; and</li> <li>• reviewing advertising restrictions following completion of the national review of drugs, poisons and controlled substances legislation.</li> </ul>	See <i>Stock (Chemical Residues) Act 1975</i> above.	Council to finalise assessment in 2003.

(continued)

Table 4.6 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Victoria	<i>Agriculture and Veterinary Chemicals (Victoria) Act 1994</i>	Imports the Agricultural and Veterinary Chemicals Code into State jurisdiction.	See Commonwealth <i>Agricultural and Veterinary Chemicals Code Act 1994</i> above.	See Commonwealth <i>Agricultural and Veterinary Chemicals Code Act 1994</i> above.	Council to finalise assessment in 2003.
	<i>Agriculture and Veterinary Chemicals (Control of Use) Act 1992</i>	Allows 'off-label' use of chemicals subject to conditions. Conditions vary markedly among jurisdictions.  Exempts Veterinary surgeons from various controls.  Provides for licensing of spray contractors.	For national review, see <i>Agricultural and Veterinary Chemicals Code Act 1994</i> above. Review recommended: <ul style="list-style-type: none"> <li>• developing a nationally consistent approach to 'off-label' use;</li> <li>• retaining the veterinarian exemption for veterinary chemicals but not agricultural chemicals;</li> <li>• licensing spraying businesses subject to maintenance of records, employment licensed persons and provision of necessary infrastructure;</li> <li>• licensing persons who spray for fee or reward, subject to accreditation of their competency and only if they work for a licensed business;</li> <li>• exempting from licensing those persons who spraying on their own land.</li> </ul>	Intergovernmental response was completed in 2000. Ministers established a taskforce to develop a nationally consistent approach to 'control of use' regulation. The taskforce is still considering 'off-label' use. A working party is harmonising aerial sprayer licensing. Other reforms are being implemented by States and Territories.  In 2001 Victoria: <ul style="list-style-type: none"> <li>• removed the veterinarian exemption for agricultural chemicals;</li> <li>• amended its sprayer licensing regulation but retained mandatory insurance; and</li> <li>• recognised interstate licences.</li> </ul>	Council to finalise assessment in 2003.

*(continued)*

Table 4.6 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Queensland	<i>Agricultural and Veterinary Chemicals (Queensland) Act 1994</i>	Imports the Agricultural and Veterinary Chemicals Code into State jurisdiction.	See Commonwealth <i>Agricultural and Veterinary Chemicals Code Act 1994</i> above.	See Commonwealth <i>Agricultural and Veterinary Chemicals Code Act 1994</i> above.	Council to finalise assessment in 2003.
	<i>Agricultural Chemicals Distribution Control Act 1966</i>	Provides for licensing of spray contractors.	See Victoria's <i>Agriculture and Veterinary Chemicals (Control of Use) Act 1992</i> above.  Results of national review were included in more general State review of legislation.	See Victoria's <i>Agriculture and Veterinary Chemicals (Control of Use) Act 1992</i> above.  Queensland intends to amend legislation this year.	Council to finalise assessment in 2003.
	<i>Chemical Usage (Agricultural and Veterinary) Control Act 1988</i>	Allows off-label use of chemicals subject to conditions. Conditions vary markedly among jurisdictions.  Exempts veterinary exempt from various controls.	See <i>Agricultural Chemicals Distribution Control Act 1966</i> above.	See <i>Agricultural Chemicals Distribution Control Act 1966</i> above.  Queensland intends to amend legislation this year.	Council to finalise assessment in 2003.
Western Australia	<i>Agriculture and Veterinary Chemicals (Western Australia) Act 1995</i>	Imports the Agricultural and Veterinary Chemicals Code into State jurisdiction.	See Commonwealth <i>Agricultural and Veterinary Chemicals Code Act 1994</i> above.	See Commonwealth <i>Agricultural and Veterinary Chemicals Code Act 1994</i> above.	Council to finalise assessment in 2003.

(continued)

Table 4.6 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Western Australia (continued)	<i>Agricultural Produce (Chemical Residues) Act 1983</i>	Restricts sale, movement or destruction of chemically affected produce.  Requires minimum qualifications for analysts.	See Victoria's <i>Agriculture and Veterinary Chemicals (Control of Use) Act 1992</i> above.	See Victoria's <i>Agriculture and Veterinary Chemicals (Control of Use) Act 1992</i> above.  Act is to be replaced by the Agricultural Management Bill being drafted.	Council to finalise assessment in 2003.
	<i>Aerial Spraying Control Act 1966</i>	Provides for licensing of aerial spray contractors.	See Victoria's <i>Agriculture and Veterinary Chemicals (Control of Use) Act 1992</i> above.	See Victoria's <i>Agriculture and Veterinary Chemicals (Control of Use) Act 1992</i> above.  Act is to be replaced by the Agricultural Management Bill being drafted.	Council to finalise assessment in 2003.
	<i>Veterinary Preparations and Animal Feeding Stuffs Act 1976</i>	Requires premises and products to be registered.  Restricts packaging and labelling.  Requires minimum qualifications for analysts.  Contains advertising restrictions.	See Victoria's <i>Agriculture and Veterinary Chemicals (Control of Use) Act 1992</i> above.	See Victoria's <i>Agriculture and Veterinary Chemicals (Control of Use) Act 1992</i> above.	Council to finalise assessment in 2003.

*(continued)*

Table 4.6 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>Agricultural and Veterinary Chemicals (South Australia) Act 1994</i>	Imports the Agricultural and Veterinary Chemicals Code into State jurisdiction.	See Commonwealth <i>Agricultural and Veterinary Chemicals Code Act 1994</i> above.	See Commonwealth <i>Agricultural and Veterinary Chemicals Code Act 1994</i> above.	Council to finalise assessment in 2003.
	<i>Agricultural Chemicals Act 1955</i>	Requires chemicals to be sold with registered label.  Requires chemicals to be used as per label or Ministerial directions.	Act is to be replaced by new legislation. Review of legislative proposal found all proposed restrictions to be in the public interest.	Agricultural and Veterinary Products (Control of Use) Bill has been introduced and is expected to be proclaimed by the end of 2002.	Council to finalise assessment in 2003.
	<i>Stock Foods Act 1941</i>	Requires stock foods to be sold with label or certificate specifying chemical analysis.  Prohibits seed grain from being fed to stock.	See <i>Agricultural Chemicals Act 1955</i> above.	See <i>Agricultural Chemicals Act 1955</i> above.	Council to finalise assessment in 2003.
	<i>Stock Medicines Act 1939</i>	Requires stock medicines to be registered.	See <i>Agricultural Chemicals Act 1955</i> above.	See <i>Agricultural Chemicals Act 1955</i> above.	Council to finalise assessment in 2003.
Tasmania	<i>Agricultural and Veterinary Chemicals (Tasmania) Act 1994</i>	Imports the Agricultural and Veterinary Chemicals Code into State jurisdiction.	See Commonwealth <i>Agricultural and Veterinary Chemicals Code Act 1994</i> above.	See Commonwealth <i>Agricultural and Veterinary Chemicals Code Act 1994</i> above.	Council to finalise assessment in 2003.

(continued)

Table 4.6 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Tasmania (continued)	<i>Agricultural and Veterinary Chemicals (Control of Use) Act 1995</i>	Prohibits chemicals from being used unless registered under the Code.  Provides for licensing of spray contractors.  Requires approval of indemnity insurance.	See Victoria's <i>Agriculture and Veterinary Chemicals (Control of Use) Act 1992</i> above.	See Victoria's <i>Agriculture and Veterinary Chemicals (Control of Use) Act 1992</i> above.  Act is to be amended in 2002.	Council to finalise assessment in 2003.
ACT	<i>Pesticides Act 1989</i>	Prohibits pesticides from being used unless registered.		The Act was repealed and replaced by the <i>Environmental Protection Act 1997</i> . This Act prohibits 'off-label' use unless with a permit and requires authorisation of chemical use.	Further information needed on terms of authorisations.  Council to finalise assessment in 2003.
	<i>Fertilisers Act 1904</i> (NSW) in its application in the Territory	Prohibits fertilisers from being sold unless with statement of composition.	Review was completed in 1999 by officials.	Act is to be retained.	Meets CPA obligations (June 2002).
Northern Territory	<i>Agricultural and Veterinary Chemicals (Northern Territory) Act</i>	Imports the Agricultural and Veterinary Chemicals Code into State jurisdiction.	See Commonwealth <i>Agricultural and Veterinary Chemicals Code Act 1994</i> above.	See Commonwealth <i>Agricultural and Veterinary Chemicals Code Act 1994</i> above.	Council to finalise assessment in 2003.

## Bulk grain handling and storage

### Legislative restrictions on competition

South Australia and Western Australia<sup>5</sup> regulated the bulk grain handling and storage of grain via the *Bulk Handling of Grain Act 1955* (SA) and the *Bulk Handling Act 1967* (WA). Most importantly, these Acts:

- established a State monopoly on bulk grain handling and storage;
- obliged the monopoly bulk handler to:
  - charge uniform prices irrespective of cost; and
  - receive all grain tendered to it.

### Regulating in the public interest

The main policy objective of legislative regulation in this area was to provide equal access to costly bulk grain handling and storage for all grain growers no matter where they were located. Competition was excluded so the handler could remain viable while charging a uniform price that was above cost for some growers but below cost for others.

Various efficiency costs must be weighed against this equity benefit. Where prices do not reflect costs, resources tend to be allocated away from uses that return the most value to society. From grain handling and storage regulation, for example, growers grow grain where other land uses would generate a better overall return, and vice versa. The monopoly grain handler tends to overinvest in some areas and underinvest in others. It also is less likely to respond as quickly to change in grower and buyer preferences.

The net benefit (or cost) of this form of regulation partly depends on how much society values equity among grain growers. This value can be difficult to ascertain, but evidence from other fields of agricultural policy reveals a limited appetite for support of some producers at the expense of others and/or the wider community. In any case, such special assistance can be made available in ways that do not restrict competition in the bulk grain handling and storage market — for example, via cash grants funded from either

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<sup>5</sup> New South Wales repealed its regulation of bulk grain handling and storage in 1992. Victoria's *Grain Handling and Storage Act 1995* does not restrict competition but regulates pricing and third party access. Queensland does not directly regulate bulk handling.

compulsory levies or general taxation. Legislative restrictions on this market are unlikely, therefore, to serve the public interest.

A public interest case for regulation may exist where an essential facility may not be efficiently duplicated. Port facilities for grain loading may fall into this category in some circumstances. Owners of such a facility have substantial market power to raise prices above cost and to restrict competition in allied markets. Regulation generally gives third parties the right to access such facilities and provides a mechanism for negotiating or otherwise determining the price and conditions of their use. Victoria's *Grain Handling and Storage Act 1995* is an example of this regulation specific to grain handling and storage. Part IIIA of the TPA provides a generic third party access regulatory regime.

There has been a recent surge in competitive investment in port handling for grain infrastructure. This suggests that economies of scale in the industry may be less important than once thought and, therefore, that market power is dissipating.

## Review and reform activity

### Western Australia

Western Australia has restarted the Department of Agriculture's review of the Bulk Handling Act. The Government released a discussion paper on 15 May 2002 for comment on proposals to remove restrictions on how Cooperative Bulk Handling Limited prices its services. (The provisions giving the company sole right to receive and deliver grain expired on 31 December 2000.) The paper also proposes to retain requirements that Cooperative Bulk Handling Limited allow third party access to its port facilities and that it receive all grain tendered to it. The Government has not yet released a report of the review.

Western Australia is still to complete its CPA clause 5 obligation to review and, where appropriate, reform this Act. The delay in removing the pricing restriction on Cooperative Bulk Handling Limited means that some grain growers are effectively subsidising handling and storage services for others. In addition, infrastructure investment is unlikely to be allocated to where it provides the greatest benefit, which raises storage and handling costs for all growers. In the 2003 NCP assessment, the Council will examine the outcome of Western Australia's review and reform activity in this area.

### South Australia

South Australia reviewed and repealed its Bulk Handling of Grain Act in 1998. South Australia has met its CPA clause 5 obligations by repealing the Bulk Handling of Grain Act.

**Table 4.7:** Review and reform of legislation regulating bulk grain handling and storage

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
South Australia	<i>Bulk Handling of Grain Act 1955</i>	Sole right to receive and deliver grain.  Obligation to charge uniform prices and to receive all grain tendered.	Review was completed in 1998, recommending repeal.	Act was repealed in 1998.	Meets CPA obligations (June 2002).
Western Australia	<i>Bulk Handling Act 1967</i>	Sole right to receive and deliver grain (now expired).  Obligation to charge uniform prices and to receive all grain tendered.	Review by Department of Agriculture was restarted. Discussion paper was released in May 2002 proposing removal of uniform pricing obligation but retention of obligations in relation to grain receival and port facility third party access.		Council to finalise assessment in 2003.

## Food

The food industry is a core activity in the Australian economy, involving primary producers and their suppliers, processing, transport, export, import and retailing. Food production from the farming and fisheries sector was an estimated \$29 billion in 2000-01 (AFFA 2002). Total sales by the food processing industry were an estimated \$55 billion. Food imports were \$4.8 billion.

### Legislative restrictions on competition

Commonwealth, State and Territory governments regulate the processing and sale of food in Australia. The Commonwealth's *Food Standards Australia New Zealand Act 1991* (formerly the *Australia New Zealand Food Authority Act 1991*) establishes Food Standards Australia New Zealand, or FSANZ (formerly the Australia New Zealand Food Authority, or ANZFA) which is responsible for developing, varying and reviewing the Food Standards Code. The code sets standards for the composition and labelling of food. In addition, FSANZ coordinates national food surveillance and recall systems, conducts research, assesses policies about imported food and develops codes of practice with industry.

The Commonwealth also controls the importation of foods under the *Imported Food Control Act 1992*, which does not restrict who may import foods into Australia, but requires imported food:

- to comply with Australian public health and food standards;
- to be subject to a risk assessment based program of inspecting and testing.

The Australian Quarantine Inspection Service administers the program with scientific support from FSANZ. Australian Government Analytical Laboratories is the sole provider of testing services.

States and Territories regulate food hygiene management via their Food Acts (the *Health Act 1911* in Western Australia) and often also via legislation that is specific to the dairy and meat industries. This legislation varies widely but generally provides for the approval of food premises, the authorisation of officers to inspect food and premises, and various food safety offences, including failure to comply with the Food Standards Code. Variation in regulation across jurisdictions hampers competition among suppliers in national food markets.

## Regulating in the public interest

Food containing microbial, physical or chemical contamination can pose a serious threat to human health and safety. Some consumers also have particular dietary needs, such as those arising from food allergies. Food suppliers generally have strong incentives to produce safe food of the type that consumers want and for which they will pay. Incentives can be weak, however, where:

- contamination is often not evident to the consumer until after consumption; and
- suppliers of contaminated food cannot be forced to compensate consumers, given practical difficulties in verifying food quality and linking illness with a specific supplier.

In addition, food safety incidents can shake consumer confidence in broad classes of food and thus harm other suppliers. Governments therefore endeavour through regulation to deliver a level of food safety that is acceptable to the community.

Food safety regulation is not costless, however. It imposes costs on businesses by requiring, for example, specified premises design and equipment, staff training, and up-to-date knowledge of changes in regulation. These and other costs are ultimately passed on to consumers through higher prices and reduced choices. Food regulation should therefore:

- focus on protecting public health, by intervening only on the basis of sound science and risk assessment;
- hold food suppliers responsible for food safety, by setting simple and clear performance standards and by allowing suppliers the freedom to choose how to meet these standards; and
- unless necessary to protect public health:
  - not impose significant barriers to entry by suppliers into food markets;
  - not impose different regulatory burdens on suppliers of competing food products; and
  - allow competition in the delivery of food safety services such as auditing and testing.

## Review and reform activity

The regulation of food production, processing and distribution has been subject to substantial review and reform activity since the mid-1990s. In 1994 the Australia New Zealand Food Standards Council (ANZFSC), comprising

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health Ministers from the Commonwealth, States, Territories and New Zealand, commissioned ANZFA to review each standard of the Australian Food Standards Code and the New Zealand Food Regulations. These standards covered food composition and labelling. The aim was to produce a new joint Food Standards Code that was more focused, more coherent and less prescriptive.

The council adopted the new joint Food Standards Code in November 2000 — including two new labelling standards (percentage labelling of key ingredients and nutritional panels) — and agreed to a two-year implementation period to allow businesses to minimise the associated costs. It also asked ANZFA to develop practical strategies to lower business implementation costs.

In 1995, the Australia New Zealand Food Standards Council commissioned ANZFA to develop nationally uniform food safety standards — the regulation of safe food practices, premises and equipment — to replace inconsistent and often out-of-date food hygiene regulations of the States and Territories, and New Zealand. In consultation with the States and Territories, and industry, ANZFA drafted four standards: Interpretation and Application; Food Safety Programs; Food Safety Practices and General Requirements; and Food Premises and Equipment. In July 2000, the council adopted three of the new food safety standards, which took force from February 2001. It deferred adoption of the Food Safety Programs standard pending further research on its effectiveness and efficiency.

In 1996, the Australia New Zealand Food Standards Council asked ANZFA to coordinate a review of State and Territory Food Acts and related legislation. This review resulted in a model food Bill. The Bill's accompanying regulation impact statement, including an NCP review, identified the following key restrictions on competition:<sup>6</sup>

- registration of food businesses;
- licensing of certain high risk food premises;
- licensing of laboratories and analysts to test food samples; and
- licensing of food safety auditors to audit food safety programs.

The regulation impact statement argued that these restrictions impose the minimum necessary cost to achieve the objectives of the Bill.

In March 1997, following consultation with the States and Territories, the Commonwealth commissioned the Blair review, which examined all aspects of food regulation (including competitive restrictions contained in the Australia New Zealand Food Authority Act) with the object of improving the efficiency

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<sup>6</sup> The model food Bill uses 'notification' to mean registration and 'registration' or 'approval' to mean licensing.

of food regulation while protecting public health. The Blair report in August 1998 recommended that:

- the Commonwealth, States and Territories develop a national uniform food safety regulatory framework that meets identified principles of effective and efficient regulation;
- the Commonwealth amend the Australia New Zealand Food Authority Act to clarify its objectives; and require ANZFA, in carrying out its regulatory functions, to consider whether the benefits to the community outweigh the costs and whether alternatives to the regulation would be more cost-effective in achieving such benefits;
- all relevant government agencies make contestable such services as end-product inspection, auditing and laboratory analysis; and
- regulators and industry develop an integrated food safety auditor accreditation framework.

In 1999 the Commonwealth amended the Australia New Zealand Food Authority Act as recommended.

In November 2000, CoAG signed an Intergovernmental Food Regulation Agreement. Under the agreement, the States and Territories undertook to make their food legislation consistent with the core provisions of the model food Bill within 12 months. The core provisions relate mainly to food handling offences and to adoption of the Food Standards Code. Adoption of the noncore provisions (which include the registration and licensing schemes identified above) is voluntary. States and Territories may also retain other provisions in their legislation that are not in conflict with the enacted provisions of the model food Bill.

State and Territory governments are at various stages of amending or replacing their food legislation to adopt the model food Bill. Victoria, Queensland, South Australia, Tasmania and the ACT modified their food legislation in 2001. New South Wales and the Northern Territory intend to introduce the necessary legislation this year. Western Australia has not reported its timetable for adopting the model food Bill.

Most States and Territories have undertaken the review and, where appropriate, reform of their legislation relating to food safety in the dairy and meat industries (see table 4.8 for details). In several instances, some restrictions have been retained, and the Council will be seeking more information about these restrictions prior to finalising its assessment in 2003.

The Commonwealth Government reviewed the Imported Food Control Act in 1998. The review concluded that the existing regulatory arrangements overall deliver a net benefit to the community and, therefore, should be retained. It also found, however, that the efficiency and effectiveness of the arrangements could be improved, such as by encouraging importers to take co-regulatory

responsibility for food safety. The review recommended amending the Act to allow the Australian Quarantine Inspection Service to:

- enter into quality assurance-based compliance agreements with importers;
- expand the use of certification agreements with the food authorities of other countries; and
- tailor inspection strategies and rates to reflect importer performance and quality assurance agreements.

The review also recommended that the Commonwealth Government change its policy to permit suitably qualified laboratories to test imported food in all risk categories. On 29 June 2000 the Government announced that it accepted all of the recommendations. It has implemented eight of the 23 recommendations; other issues are substantially completed but awaiting legislative change.

## Assessment

### Commonwealth

The Commonwealth has met its CPA obligations to review and reform the Food Standards Australia New Zealand Act. The Blair review was properly constituted and its recommendations appear reasonable given the evidence available to it. Amendments passed in 1999 fully addressed the recommendations for changing the Act.

In relation to the new joint Food Standards Code, the Commonwealth did not meet its CPA clause 5(5) obligation to ensure the proposed new code was accompanied by evidence that it is in the public interest. The Commonwealth Office of Regulation Review found the cost-benefit analysis in the accompanying regulation impact statements to be inadequate and, therefore, not substantively in compliance with CoAG's principles and guidelines for national standard setting and regulatory action. This noncompliance has been addressed in part, however, by the above measures aimed at reducing implementation costs for business.

The Commonwealth is yet to meet its CPA clause 5 obligations arising from the Imported Food Control Act because the recommended reforms are still to be implemented. These reforms appear on a preliminary examination to be reasonable, and if implemented would satisfy the Commonwealth's obligations in this area. The Council will finalise its assessment of this matter in the 2003 NCP assessment.

## States and Territories

The key competition restrictions imposed by the model food Bill are the provisions relating to the licensing of premises, laboratories, analysts and auditors. State and Territory adoption of these provisions is voluntary.

Where the provisions are adopted, however, their restrictive effect will depend on two features left open to State and Territory discretion:

- the criteria for granting or withholding licences; and
- the conditions that licences impose on licensees.

For State and Territories to meet their CPA clause 5 obligations arising from adopting these (or similar) provisions, they need to show that any licensing criteria and conditions are in the public interest. That is, they must show that no less restrictive alternative would meet the legislative objectives and that the benefits of the regulation exceed the costs. States and Territories also need to have reviewed any retained existing provisions that restrict competition, and reform these where this is in the public interest.

States and Territories are still to complete most of the review and reform of their food legislation, or to provide the Council with information that enables the assessment of whether they have met their CPA clause 5 obligations. Compliance will therefore also be a matter for the 2003 NCP assessment. Also in the 2003 assessment, the Council will examine review and reform of food safety legislation specific to the dairy and meat industries.

Table 4.8: Food regulation

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Commonwealth	<i>Food Standards Australia New Zealand Act 1991</i> (formerly the Australia New Zealand Food Authority Act)	Establishes FSANZ (formerly ANZFA), which develops food standards, coordinates food surveillance and recall systems, and develops codes of practice with industry.	Blair review of food regulation was completed in 1998. It recommended amending the Act to: <ul style="list-style-type: none"> <li>• clarify regulatory objectives;</li> <li>• require ANZFA, in carrying out its regulatory functions, to apply an NCP test.</li> </ul>	Act was amended by the <i>Australia New Zealand Food Authority Amendment Act 1999</i> to address the key recommendations.	Meets CPA obligations (June 2001).
	Food Standards Code	Sets standards for preparation, composition and labelling of food.	ANZFA developed a proposed new joint code including new standards on ingredient and nutritional labelling. It undertook regulatory impact analysis but the Office of Regulation Review found this analysis to be inadequate.	New joint code was adopted in November 2000 for implementation by November 2002.	Council to finalise assessment in 2003.
	<i>Imported Food Control Act 1992</i>	Requires imported food to meet Australian standards.  Subjects imported food to risk-based inspection and testing.  Provides for testing to be performed only by the Australian Government Analytical Laboratories.	Review was completed in 1998. It recommended: <ul style="list-style-type: none"> <li>• recognising quality assurance processes of importers;</li> <li>• tailoring inspection rates and strategies to importer performance and agreements on certification and compliance; and</li> <li>• permitting qualified laboratories to test imported food.</li> </ul>	Commonwealth accepted all recommendations in June 2000. Some have been implemented administratively while others await legislative change. Amendments have been drafted.	Council to finalise assessment in 2003.

*(continued)*

Table 4.8 continued

<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>Food Act 1989</i>	Provides for various food safety offences.  Provides for wide powers to make orders prohibiting or requiring conduct.	National review completed in 2000. It produced the model food Bill - a uniform regulatory framework for States and Territories. The Bill's core provisions adopt the Food Standards Code and set out various offences. Its noncore provisions include: <ul style="list-style-type: none"> <li>• registration of all food businesses;</li> <li>• approval of food premises; and</li> <li>• contestable provision of audit and laboratory services subject to approval of providers.</li> </ul>	All States and Territories agreed in November 2000 to adopt core provisions of the model food Bill by November 2001.  New South Wales expects to introduce amendments in 2002.	Council to finalise assessment in 2003.
	<i>Dairy Industry Act 1979</i>	Provides for licensing of farmers and processors.	Review was completed in 1997.	Licensing and inspection provisions were replaced by the Food Production (Dairy Food Safety Scheme) Regulation 1999.	Further evidence needed on retained restrictions. Council to finalise assessment in 2003.
	<i>Meat Industry Act 1987</i>	Provides for licensing of farmers and processors.	Review was completed in 1998.	Licensing and inspection provisions were replaced by the Food Production (Meat Food Safety Scheme) Regulation 2000.	Further evidence needed on retained restrictions. Council to finalise assessment in 2003.

*(continued)*

Table 4.8 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Victoria	<i>Food Act 1984</i>	<p>Various food safety offences.</p> <p>Food to meet prescribed food standards.</p> <p>Registration of food premises and vehicles.</p> <p>Food safety programs required for declared food premises/vehicles.</p> <p>Approval of auditors.</p>	National review was completed in 2000 (see New South Wales <i>Food Act 1989</i> ).	<p>All Australian governments agreed in November 2000 to adopt core provisions of the model food Bill by November 2001.</p> <p>Act was amended by the <i>Food (Amendment) Act 2001</i> to adopt provisions of the model food Bill.</p>	Further evidence needed on retained restrictions. Council to finalise assessment in 2003.
	<i>Dairy Industry Act 1992</i>	Licensing of farmers, processors, distributors and carriers.	Review was completed in 1999 by independent consultant. It recommended retaining some food safety related restrictions but removing the public sector monopoly on the audit of food safety programs.	The Government accepted all review recommendations. Act was repealed by the <i>Dairy Act 2000</i> , which establishes Dairy Food Safety Victoria.	Meets CPA obligations (June 2002).
	<i>Meat Industry Act 1993</i>	<p>Licensing of processing facilities and vehicles.</p> <p>Quality assurance programs required for certain premises.</p> <p>Minimum qualifications for inspectors.</p> <p>Minimum experience and qualifications for auditors.</p>	<p>Review by consultant was completed in March 2001. It recommended:</p> <ul style="list-style-type: none"> <li>• retaining licensing, minimum qualifications for inspectors, and minimum experience and qualifications for auditors;</li> <li>• improving the accountability of the Meat Industry Authority; and</li> <li>• prohibiting discriminatory exercise of Ministerial powers.</li> </ul>	The Government accepted all but the recommendation to circumscribe the Minister's power to direct the Meat Industry Authority. Instead, the Government agreed to the disclosure of such directions. Act was amended accordingly in 2001.	Further evidence needed on retained restrictions. Council to finalise assessment in 2003.

*(continued)*

Table 4.8 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Queensland	<i>Food Act 1981</i>	Provides for various food safety offences. Requires food to meet prescribed food standards. Requires registration of food premises (under associated regulations).	National review was completed in 2000 (see New South Wales <i>Food Act 1989</i> ).	All Australian governments agreed in November 2000 to adopt core provisions of the model food Bill by November 2001.  Queensland amended the Act accordingly in 2001. It is now consulting on adoption of the noncore provisions of the model food Bill.	Evidence needed on any restrictions to be retained. Council to finalise assessment in 2003.
	<i>Dairy Industry Act 1993</i>	Provides for licensing of farmers and processors.	Government/industry panel review was completed in 1998.	Licensing and inspection provisions replaced from 1 July 2002 by the Dairy Food Safety Scheme under the <i>Food Production (Safety) Act 2000</i> .	Further evidence needed on retained restrictions. Council to finalise assessment in 2003.
	<i>Meat Industry Act 1993</i>	Provides for various food safety offences. Minimum qualifications for meat safety officers. Accreditation of processing facilities. Wide powers to make standards.	Review was completed in 1999, recommending the development of new food safety standards (especially for high risk foods).	Act was repealed and provisions for meat safety standards were included in the <i>Food Production (Safety) Act 2000</i> .	Further evidence needed on retained restrictions. Council to finalise assessment in 2003.

*(continued)*

Table 4.8 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>Health Act 1911</i>	Various food safety offences. Food to meet prescribed food standards.	National review was completed in 2000 (see New South Wales <i>Food Act 1989</i> ).	All Australian governments agreed in November 2000 to adopt the core provisions of the model food Bill by November 2001.  Western Australia expects to introduce new food Bill in the spring 2002 session of Parliament.	Council to finalise assessment in 2003.
	Health (Food Hygiene) Regulations 1993	Provides for licensing of food processors and registration of premises. Specifies safe food practices.	Regulations are under review.		Council to finalise assessment in 2003.
	Health (Game Meat) Regulations 1992	Requires minimum qualifications for slaughterers.  Provides for registration of field depots and processing facilities.	Review completed.	Regulations were repealed and replaced by the Health (Meat Hygiene) Regulations 2001.	Further evidence needed on retained restrictions. Council to finalise assessment in 2003.

*(continued)*

Table 4.8 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>Food Act 1985</i>	Specifies offence to manufacture or sell food that does not meet prescribed standard.	National review was completed in 2000 (see New South Wales <i>Food Act 1989</i> ).	All Australian governments agreed in November 2000 to adopt the core provisions of the model food Bill by November 2001.  A new Food Act was passed in July 2001.	Further evidence needed on retained restrictions. Council to finalise the assessment in 2003.
	<i>Dairy Industry Act 1992</i>	Provides for licensing of farmers, processors and vendors.	Food safety provisions remain under review. Officials have developed a discussion paper for new primary industry 'food safety' legislation that would incorporate provisions for the dairy industry.		Council to finalise assessment in 2003.
	<i>Meat Hygiene Act 1994</i>	Provides for accreditation of meat processors.  Requires meat inspectors and auditors to enter agreement with Minister.	Review was completed in 2000. It recommended extending the Act to cover rabbit meat and retail.		Further evidence needed on retained restrictions. Council to finalise assessment in 2003.

*(continued)*

Table 4.8 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Tasmania	<i>Public Health Act 1962</i>	Provides for various food safety offences. Requires food to meet prescribed food standards. Requires registration of premises and vehicles. Provides for licensing of food manufacturers and sellers.	Proposed replacement legislation — Food Bill — was subject to CPA clause 5(5) review. National review was completed in 2000 (see New South Wales <i>Food Act 1989</i> ).	Act was replaced by <i>Food Act 1998</i> . All Australian governments agreed in November 2000 to adopt the core provisions of the model food Bill by November 2001. Core provisions were adopted via the Food Regulations 2001.	Further evidence needed on retained restrictions. Council to finalise assessment in 2003.
	<i>Dairy Industry Act 1994</i>	Provides for licensing of farmers, processors, manufacturers and vendors.	Review by a government/industry panel was completed in 1999.		Further evidence needed on retained restrictions. Council to finalise assessment in 2003.
	<i>Meat Hygiene Act 1985</i>	Provides for licensing of meat processing facilities.	Review was completed.	Reform legislation is to be introduced in 2002.	Council to finalise assessment in 2003.

*(continued)*

Table 4.8 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
ACT	<i>Food Act 1992</i>	Provides for various food safety offences. Provides for licensing of food businesses. Requires food to meet prescribed food standards.	National review was completed in 2000 (see New South Wales <i>Food Act 1989</i> ).	All Australian governments agreed in November 2000 to adopt the core provisions of the model food Bill by November 2001. Act was amended accordingly in August 2001.	Further evidence needed on retained restrictions. Council to finalise assessment in 2003.
	<i>Meat Act 1931</i>	Requires Ministerial permission for certain meat processing activities.		Act was repealed by the <i>Food Act 2001</i> , subject to the passage of uniform food legislation.	Meets CPA obligations (June 2002).
Northern Territory	<i>Food Act 1986</i>	Provides for various food safety offences.	National review was completed in 2000 (see New South Wales <i>Food Act 1989</i> ).	All Australian governments agreed in November 2000 to adopt the core provisions of the model food Bill by November 2001. Act is to be amended accordingly in 2002.	Council to finalise assessment in 2003.
	<i>Meat Industries Act 1997</i>	Provides for various food safety offences. Provides for licensing of processing facilities.	Review was completed by an independent reviewer in November 2000. It recommended no change. The Government accepted the recommendation in April 2001.		Meets CPA obligations (June 2002).

## Quarantine and food exports

### Quarantine

In 1999-2000 the Australian Quarantine Inspection Service supervised about 11 600 ship arrivals; processed 8.7 million passengers and aircrew, about one million cargo containers, 4.1 million airfreight consignments and more than 160 million mail articles; and managed the discharge of more than 150 million tonnes of ballast water (AQIS 2000).

#### Legislative restrictions on competition

The Commonwealth Government administers Australia's quarantine arrangements under the *Quarantine Act 1908*. The Act prohibits the import of certain goods, animals and plants unless with a permit. Other imports may require inspection or treatment before being allowed into the country. The entry of goods and passengers to Australia is also subject to screening by quarantine officers (appointed under the Act) who are empowered to search, seize and treat goods suspected of being a quarantine risk.

#### Regulating in the public interest

Exotic pests and diseases pose a serious threat to the Australian population, fauna and flora, and agriculture. Controlling this threat is a public good — given that it generally is neither feasible nor optimal to exclude persons who benefit from quarantine controls — so governments must intervene to supply the level of quarantine control desired by the community. Quarantine controls do, however, impose costs on international trade and travel, which are activities of considerable benefit to the public. To meet the public interest, governments should use the least costly quarantine controls available, and then only to the extent that the benefit of reduced pest and disease threat outweighs the cost.

#### Review and reform activity

The Quarantine Act was already under review when it was placed on the Commonwealth's legislation review schedule in 1996, but this review (the Nairn review) did not specifically consider whether the Act restricts competition. Consequently, the Commonwealth agreed in 1998 to review any elements of the Act that the Nairn review had not considered and that restrict competition.

In 1997-98 the Department of Health and Aged Care led an NCP review of those parts of the Act relating to human quarantine. This review concluded

that these provisions have minimal impact on competition and that the public health benefits outweigh this impact. It also found, however, scope to update the legislation to reflect current policy and practice. The Government released a final report in December 2000 following further research and consultation on possible changes. This report recommended amendments to the Act, along with further research and consultation on several remaining complex issues. Amending legislation is expected to be introduced later in 2002.

The Department of Agriculture, Fisheries and Forestry is giving consideration to whether any parts of the Act related to animal and plant quarantine significantly restrict competition and therefore justify review.

## Assessment

The NCP review of the human quarantine provisions of the Quarantine Act appears to have reached an outcome consistent with the evidence before the review. As such, and because the further review and reform activity does not relate to material restrictions on competition, the Council considers that the Commonwealth has met its CPA clause 5 obligations relating to these provisions.

To meet its CPA clause 5 obligations relating to the animal and plant health provisions of the Act the Commonwealth needs to either:

- review and, where appropriate, reform these provisions; or
- show that these provisions do not significantly restrict competition.

The Council will assess the Commonwealth's CPA compliance in this area in 2003.

## Food exports

Food exports make an important contribution to Australia's international trade, accounting for \$24.3 billion in 2000-01 (AFFA 2002).

### Legislative restrictions on competition

The Commonwealth's *Export Control Act 1982* provides for the inspection and control of exports prescribed by regulation (namely, the export of food and forest products). The 'Forestry' section of this chapter discusses review and reform activity relating to restrictions on competition in the export of forest products. The Export Control Act controls most food exports — fish, dairy produce, eggs, meat, dried fruits, fresh fruit and vegetables and some processed fruit and vegetables — and it restricts competition in this area by:

- requiring premises to be registered and to meet certain construction standards;

- imposing processing standards; and
- imposing compliance costs and regulatory charges.

These restrictions raise Australian food exporters' costs and may lead to forgone export sales, particularly where the requirements differ from those for domestic sales.

Regulating in the public interest

In exporting food, Australia must meet:

- market access requirements imposed by, or negotiated with, foreign governments, such as:
  - specified food safety standards or certification by a government agency;
  - trade and product descriptions, and volume limitations;
- obligations under various international agreements; and
- a moral obligation not to export dangerous or unhealthy food.

In addition to these obligations, all Australian food exporters may lose access to a market if one exporter causes a food safety incident. While exporters generally have strong incentives to avoid such incidents, the disruption of exports due to an isolated failure could have a significant impact on the performance of the Australian economy, particularly on the rural and food sectors, and individual producers. Regulating food exports is in the public interest, therefore, where Australian exporters would otherwise not maintain access to foreign markets and where least-cost controls are used. Such controls generally allow exporters flexibility as to how they meet market requirements (for example, via accredited quality assurance systems).

Review and reform activity

The Commonwealth completed a two-year review of the Act, as it relates to fish, grains, dairy and processed food, in February 2000. The review was led by a largely independent review committee which consulted extensively within and beyond Australia. The review found that the Act is fulfilling its purpose and delivering an overall economic benefit, having facilitated exports worth \$13 billion in 1998-99. Against this finding, the review recommended improving the administration of the Act by:

- introducing a three-tiered system for administering Australian standards, access standards imposed by overseas governments and market-specific requirements;
- harmonising domestic and export standards, and making them consistent with relevant international standards;

- continuing to have a single government agency administer the certification of Australia exports;
- making monitoring and inspection arrangements fully contestable; and
- establishing development committees (with industry and Australian Quarantine Inspection Service representation) to determine and implement strategies and priorities for relevant industries.

The Commonwealth decided in April 2002 to accept all recommendations, and is consulting with industry on timeframes for implementation of the reforms.

#### Assessment

The review of the food-related provisions of the Export Control Act was properly constituted, and its findings and recommendations appear to be within a reasonable range of possible outcomes. As the Commonwealth is still to implement the review recommendations, it is yet to fully meet its CPA clause 5 obligation. The Council will finalise its assessment of the Commonwealth's compliance in 2003.

Table 4.9: Quarantine and export control regulation

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Commonwealth	<i>Quarantine Act 1908</i>	Screening of goods and passengers entering Australia.  Prohibition of import of certain goods, animals and plants unless with a permit.	Provisions relating to human quarantine reviewed by the Department of Health and Aged Care in 1998. Review found minimal impact on competition, along with public health benefits in excess of costs.  Department of Agriculture, Fisheries and Forestry is considering the need for review of provisions related to animal and plant quarantine.		Human quarantine — meets CPA obligations (June 2001).  Plant and animal quarantine — Council to finalise assessment in 2003.
	<i>Export Control Act 1982 (food provisions)</i>	Registration of processing premises.  Inspection of premises and goods.  Product standards.  Charges and penalties for noncompliance.	Review of provisions related to fish, grain, dairy and processed food was completed in February 2000. It recommended: <ul style="list-style-type: none"> <li>• introducing a three-tier model for export standards;</li> <li>• harmonising domestic and international standards;</li> <li>• retaining a monopoly on certification of exports; and</li> <li>• making monitoring and inspection contestable.</li> </ul> The Government has accepted all recommendations. An implementation timetable is being developed with industry.		Council to finalise assessment in 2003.

## Veterinary services

About 7000 professional veterinarians are practising in Australia (DEST 2002). About 60 per cent are in private practice, caring for the companion animals of city people, the agricultural animals of farmers and racing greyhounds and horses. Others work for governments to control and prevent diseases that could affect animals throughout the country. Some veterinarians are field officers and some work in laboratories with diagnostic or research duties. Others are in higher education as well as research and development in the chemical and pharmaceutical industries.

## Legislative restrictions on competition

All States and Territories regulate veterinarians via specific legislation. This legislation typically restricts competition among veterinarians through:

- registration and education requirements;
- the reservation of title and certain areas of practice to veterinarians;
- business conduct restrictions, such as controls on advertising and ownership; and
- disciplinary processes.

In addition, legislation relating to drugs and poisons, and animal health welfare may also affect veterinary practice. These restrictions constrain entry into the profession and innovation by veterinarians, thereby raising the cost of veterinarians' services and limiting choice for consumers, particularly for those in regional and remote areas. In May 2002 the Commonwealth announced a review into the shortage of veterinarians in country areas.

## Regulating in the public interest

The principal objective of legislation regulating veterinary practice is to protect the public against professional incompetence, recognising that many consumers of veterinary services may have difficulty assessing the capability of veterinarians. Other objectives to which veterinary legislation contributes, but which generally are the subject of more specific and direct legislation, are:

- to limit the threat posed by inadequate diagnosis and treatment of animal diseases to public health and Australia's livestock and livestock product trade; and
- to protect the welfare of animals.

Professional regulation such as that of veterinary services is in the public interest where restrictions directly reduce identified and important harms and are the minimum effective response. In particular, regulation of veterinary practice in the public interest should:

- ensure professional interests do not dominate regulatory decisions on entry and conduct, by having regulatory bodies with strong community representation and only a minority representation from the profession;
- restrict entry only on the basis of clear and objective criteria, such as widely recognised and available qualifications and the absence of specific offences;
- reserve areas of practice only in specific terms, so that the reservation reduces harms that cannot be addressed in less costly ways, and allow less risky areas of practice to be performed by less qualified practitioners; and
- not restrict business conduct in ways that are only weakly linked to avoiding harm, such as reservation of practice ownership to veterinarians or advertising prohibitions beyond those in the TPA.

## Review and reform activity

All States and Territories have largely completed the review of their legislation in this area. Victoria, Queensland and the Northern Territory have implemented reform. The other jurisdictions intend to introduce amendments to their legislation in 2000.

The main reforms implemented or foreshadowed have been to remove business conduct restrictions such as the reservation of practice ownership to veterinarians and advertising prohibitions (to the extent that advertising is restricted beyond general fair trading regulation). Less common has been the removal of general reservations of practice (although Victoria's legislation does not reserve practice and the ACT intends to remove its reservation). Table 4.10 summarises the key restrictions that remain in each jurisdiction.

**Table 4.10: Veterinary surgery regulation post-reform**

<i>Jurisdiction and legislation</i>	<i>Registration board membership</i>	<i>Registration criteria</i>	<i>Reservation of practice</i>	<i>Business conduct restrictions</i>
Victoria <i>Veterinary Practice Act 1997</i>	Six veterinarians One lawyer Two nonveterinarians	Recognised qualification or equivalent  Good character including no prior offences	No general reservations in Act but several specific reservations in other legislation	Advertising restrictions equivalent to those in the TPA
Queensland <i>Veterinary Surgeons Act 1936</i>	Four veterinarians Chief animal health officer One other person	Recognised qualification, college membership or equivalent  Good fame and character	General reservation subject to exclusion of practice not for fee or reward and certain minor acts	Prior approval of premises
Northern Territory <i>Veterinarians Act 1994</i>	Two veterinarians Chief stock inspector One nonveterinarian One other person (who may be a vet)	Recognised qualification, college membership or registration in another State or Territory  No prior offences	General reservation subject to exclusion of practice by certain other health professionals and by other persons at the direction of a veterinarian, and of certain minor acts	Advertising restrictions equivalent to those in the TPA

## Assessment

The Council's assessment of review and reform by Victoria, Queensland and the Northern Territory against CPA clause 5 obligations focused on several key restrictions on competition. The Council is concerned that veterinarians dominate registration boards in all three jurisdictions, although less so in the Northern Territory than in Victoria and Queensland. The composition of registration boards should avoid the possibility of professional interests predominating in registration, standard-setting and disciplinary decisions. The inclusion of a minority of veterinarians is sufficient to ensure access to relevant expertise. Regulatory bodies should involve consumer representation, given that consumer protection is the principal objective of regulating the profession. Other relevant expertise, particularly legal expertise where the board hears disciplinary matters, should be represented.

The Council is also concerned where registration criteria potentially allows the setting of a higher than necessary barrier to entry. Queensland's registration criteria requires that an applicant be of 'good fame and character' – a criterion which, on its own, leaves considerable doubt as to how it is applied. This doubt could be addressed by identifying specific character disqualifications, such as prior offences, either in the Act, in regulations or in guidelines made available to the public.

The reservation of practice to qualified professionals can be in the public interest. In accordance with the principle of minimum necessary regulation, however, the Council generally favours specific reservations over general ones such as in the Queensland and the Northern Territory legislation. Specific reservations allow competition from lesser qualified providers except where this would clearly be harmful and where there are no less restrictive means of addressing the harm. Such reservations may be best made in other legislation, such as that targeted at controlling animal disease or protecting animal welfare. This is the approach of the Victorian legislation and, the Council understands, the intended approach of upcoming reforms in the ACT.

Queensland's *Veterinary Surgeons Act 1936*, as recently amended, requires the approval and registration of premises from which veterinarians deliver services. Neither the Victorian nor the Northern Territory legislation includes this sort of provision. Western Australia intends to replace a similar provision with a code of practice. The Council is concerned that the Queensland provision, which could allow the arbitrary exclusion of new competing premises, is more restrictive than necessary to achieve the legislation's objective.

The Council will finalise its assessment of compliance with the CPA clause 5 in 2003. The Council will look for Victoria, Queensland and the Northern Territory to address the concerns identified above – either by reforming those restrictions or showing how they are in the public interest. It will also look for New South Wales, Western Australia, South Australia, Tasmania and the ACT to have completed their review and reform of their veterinary practice legislation, and to demonstrate that their legislation is consistent with CPA clause 5 principles.

Table 4.11: Veterinary surgery regulation

<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>Veterinary Surgeons Act 1986</i>	Licensing of veterinary surgeons and hospitals, reservation of practices, reservation of title, advertising restrictions, controls on business names.	Review was completed in 1998 by a panel of officials, veterinarians, consumers and animal welfare interests. The Government is developing its intended reforms with public consultation. The Government stated that it intends to make amendments in 2002.		Council to finalise assessment in 2003.
Victoria	<i>Veterinary Practice Act 1997</i>	Registration of veterinary practitioners, reservation of title, advertising restrictions.	Act followed a pre-NCP review of earlier legislation. Victoria considers remaining restrictions are in the public interest.		Council to finalise assessment in 2003.
Queensland	<i>Veterinary Surgeons Act 1936</i>	Registration of veterinary surgeons, general reservation of practice, advertising restrictions, ownership restrictions, controls on business names.	Review was completed in 1999. It recommended: <ul style="list-style-type: none"> <li>retaining registration, practice reservation and approval of premises; and</li> <li>removing of restrictions on ownership, advertising and business names.</li> </ul>	Act was amended accordingly in October 2001.	Council to finalise assessment in 2003.
Western Australia	<i>Veterinary Surgeons Act 1960</i>	Licensing of veterinary surgeons and hospitals, general reservation of practice, reservation of title, advertising restrictions, controls on business names.	Review was completed in 2001. It recommended: <ul style="list-style-type: none"> <li>introducing a new registration for lesser qualified practitioners; but</li> <li>replacing restrictions on advertising, premises and ownership with voluntary codes.</li> </ul> <p>The Government has endorsed the review recommendations and intends to amend the Act this year.</p>		Council to finalise assessment in 2003.

*(continued)*

Table 4.11 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>Veterinary Surgeons Act 1985</i>	Licensing of veterinary surgeons and hospitals, reservation of practices, reservation of title, advertising restrictions, controls on business names.	Review was completed in 2000. The Government is preparing new legislation to replace the Act.		Council to finalise assessment in 2003.
Tasmania	<i>Veterinary Surgeons Act 1987</i>	Licensing of veterinary surgeons and hospitals, reservation of practices, reservation of title.	Minor review was completed and the Government intends to amend the Act in 2002.		Council to finalise assessment in 2003.
ACT	<i>Veterinary Surgeons Registration Act 1965</i>	Licensing of veterinary surgeons, reservation of practices, reservation of title, advertising restrictions.	Review was completed in March 2001. It recommended: <ul style="list-style-type: none"> <li>retaining registration, reservation of title and clear conduct standards; and</li> <li>removing the general reservation of practice.</li> </ul> The Government expects to amend the legislation in 2002.		Council to finalise assessment in 2003.
Northern Territory	<i>Veterinarians Act 1994</i>	Licensing of veterinary surgeons, reservation of practices, reservation of title, advertising restrictions.	Review was completed in 2000. It recommended: <ul style="list-style-type: none"> <li>retaining licensing, reservation of title and reservation of practices;</li> <li>having additional consumer representation on the Veterinary Board; and</li> <li>removing some advertising restrictions.</li> </ul>	Act and Regulations were amended accordingly in March 2001.	Council to finalise assessment in 2003.

## Mining

Coal mining and mining for metal ores generated turnover of \$26.6 billion in 1999-2000 and added \$15.2 billion to Australia's national income (ABS 2001a).

With few exceptions ownership of minerals is reserved in legislation to the Crown — being the government which has jurisdiction over the territory in which the minerals occur — principally State governments and the Northern Territory Government. The mining industry in Australia is privately owned. Governments intervene principally through regulation, some of which is specific to the industry,<sup>7</sup> and restricts competition in mineral and related markets. Governments' CPA obligations relating to mining are therefore to review and, where appropriate, reform this regulation.

### Legislative restrictions on competition

Governments prohibit exploration for and extraction of minerals without a right such as a licence or permit.

Exploration rights are exclusive, generally nontradeable and defined by area boundaries and period — between 2 and 10 years. Governments usually allocate these on a 'first come, first served' basis, although there are some instances of competitive tenders. These rights often oblige holders to undertake a specified level of exploration work and to reveal the results of this work. Holders wishing to extract minerals must make a further application for an extraction right (or mining lease or licence).

Extraction rights are also exclusive and generally nontradeable. Their term is between 16 and 25 years. The rights require the holder to pay a resource royalty to the government, to pay fair compensation to the landowner, and to minimise environmental harms including through rehabilitation of former mine sites.

Some specific large mining projects are regulated by Agreement Acts. These Acts specify in advance the contributions and obligations of the developer and the government and, therefore, reduce uncertainty for miners and mine investors. As well as allocating ownership of resources, these Acts cover in some instances the provision of transport, water and energy infrastructure. The Agreement Acts are most common in Western Australia where there are

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<sup>7</sup> Governments also provide assistance in relation to matters such as research and information.

some 64 resource development Agreement Acts. Few Agreement Acts in Australia have been listed for review.

## Regulating in the public interest

The Industry Commission's 1991 report on mining and minerals processing contains an extensive and authoritative analysis of the regulation of mining (IC 1991). The commission evaluated the allocation of exploration and extraction rights and recommended either:

- its preferred approach — long-term (99 year) tradeable mineral rights, subject only to limited and well-defined conditions related to royalties and environmental safeguards, allocated by competitive cash bidding; or
- an incremental change approach — existing mineral rights, except that exploration rights should not be subject to work program conditions, allocated on the 'first come, first served' basis, or a competitive basis where there is the prospect of significant competition for a right.

Agreement Acts provide long term and well-defined rights and obligations and, therefore, are not inconsistent with the approach advocated by the commission. The issue of most concern for competition is how these rights are allocated. The allocation process tends to be ad hoc, rather than governed by legislation, so public interest issues arising from the making of these agreements are better addressed by means other than the CPA clause 5 obligations. Consequently, the Council does not consider Agreement Acts are a priority for NCP assessment.

## Review and reform activity

### Commonwealth

The Commonwealth commissioned an independent review of the *Aboriginal Land Rights (Northern Territory) Act 1976* and Regulations in 1998. This legislation gives traditional Aboriginal owners the right to consent to mineral exploration. The review, released in August 1999, recommended that this right be retained, and that various other restrictions on consent negotiations be removed. The Commonwealth is considering its response to this and other reviews of the legislation.

The Commonwealth reviewed its *Nuclear Safeguards (Producers of Uranium Ore Concentrates) Charge Act 1993* and Regulations in 1997. This legislation imposes on uranium producers a fee to recover costs of nuclear safeguards and protection activities related to uranium production. The review, by a committee of officials, recommended replacing the flat per-producer fee with

one based on uranium output and historical costs of these activities. It also recommended a cap of \$500 000 per year per producer. In December 1997 the Government announced that it accepted all recommendations except the fee cap removal. The change to the fee was implemented by regulation.

## Assessment

The Commonwealth is yet to meet its obligations relating to the Aboriginal Land Rights (Northern Territory) Act (and Regulations) because it has not responded to the review or made the recommended reforms. The Council will finalise its assessment of this matter in 2003.

The Council accepts that the Commonwealth has substantively met its CPA clause 5 obligations relating to the Nuclear Safeguards (Producers of Uranium Ore Concentrates) Charge Act and Regulations. The Council acknowledges that retaining the fee cap is unlikely to have a significant effect on competition.

## New South Wales

New South Wales has progressed the NCP reviews of its *Coal Mines Regulation Act 1982* and *Mines Inspection Act 1901* as part of a general review of mine safety regulation. New South Wales expects a report shortly and to make consequential reforms in 2002-03.

New South Wales reviewed the licensing provisions of the *Mining Act 1992* as part of its licence reduction program. Other provisions are included in its mine safety regulation review.

New South Wales is yet to complete the NCP review of its mining legislation and therefore is yet to fulfil its related CPA obligations. The Council will finalise its assessment in 2003.

## Victoria

Victoria completed an independent review of its *Mineral Resources Development Act 1990* in 1997. The review's most important recommendations called for removal of:

- various licensing criteria, including that the applicant is 'fit and proper';
- employment conditions of licences; and
- certification of mine managers.

The Government's response accepted most recommendations at least in part.

Victoria released in October 2001 the report of an independent review of its *Extractive Industries Development Act 1995*. Amongst other things this recommended removal of the requirement for quarry operators to obtain a work authority from the Minister. The Government is considering its response to the recommendations.

The Council found in its 2001 NCP assessment that Victoria had met its CPA obligations relating to the Mineral Resources Development Act. The review was open and independent, and the Government has implemented most recommendations at least in part.

Victoria has not met its CPA clause 5 obligations in relation to the Extractive Industries Development Act. It has not responded to the review recommendations and, in particular, the recommendation to remove the requirement for quarry operators to obtain a work authority. Given the recommended changes are minor, the Council acknowledges that the cost of the delay in the Government's response is not likely to be significant. The Council will finalise its assessment in 2003.

## Queensland

Queensland listed its *Coal Industry (Control) Act 1948* for review. This was repealed in 1997.

The Government did not list for review two key mining Acts — the *Coal Mining Act 1925* and the *Mineral Resources Act 1989*. The Government repealed the Coal Mining Act and replaced it with the *Coal Mining Health and Safety Act 1999* which was examined under Queensland's gatekeeper process for legislative proposals that restrict competition. Queensland did not list for review the Mineral Resources Act, which regulates the allocation of exploration and extraction rights, on the basis that:

- reviews of similar legislation in other jurisdictions have recommended no more than minor changes;
- the Act is consistent with the outcome of the national review of Petroleum (Submerged Lands) Acts; and
- the Act includes an open appeals process.

The Council found in its 1999 NCP assessment that Queensland's repeal of the Coal Industry (Control) Act met its related CPA obligations. The Council assessed in 2001 that Queensland had met its CPA obligations relating to the Coal Mining Act and the Mineral Resources Act.

## Western Australia

The principal mining legislation in Western Australia is the *Mining Act 1978*. Similarly to other general mining legislation, this Act prohibits mineral exploration and extraction activity without a licence or similar right issued by the Government. These licences are transferable subject to, in some circumstances, Ministerial consent. Exploration rights have a maximum term of five years. Extraction rights have a maximum term of 21 years and are renewable for further 21 year terms on application to the Minister. A review of the Act by the Department of Minerals and Energy recommended retaining all existing restrictions. The then Government endorsed this outcome in December 2000.

The 2001 NCP assessment reported that in June 1999 the Council had assessed Western Australia as having met its CPA clause 5 obligations relating to the Mining Act.<sup>8</sup> The Council reached this judgment because it understood that the Government had accepted the finding by the State's NCP review that the restrictions in the Act provide a net community benefit. The date at which the assessment of compliance was made was, however, June 2001.

## South Australia

South Australia reported that its major mining legislation (namely the *Mining Act 1929*, the *Mines and Works Inspection Act 1920* and the *Opal Mining Act 1995*) remains under NCP review.

South Australia is yet to meet its CPA obligations in relation to legislation regulating mining because is still to complete its NCP review of legislation in this area. The Council will finalise its assessment in 2003.

## Tasmania

Tasmania has completed the review of its *Mineral Resources Development Act 1995*. In 2000 the government/industry review panel consulted widely via the release of a discussion paper and regulatory impact statement. Following this it recommended retention of all existing restrictions on competition.

The Council considers that Tasmania has met its CPA clause 5 obligations in relation to the Mineral Resources Development Act. The review process was

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<sup>8</sup> Other Western Australian legislation previously identified as priority assessment matters were the Coal Industry Superannuation Act 1989 and the Gold Corporation Act 1987. The Council's investigations indicate that these Acts are only tangentially related to mining activity.

open and the Act is similar to legislation which has been found to be in the public interest in other jurisdictions.

## The Northern Territory

The Northern Territory's principal mining legislation is the *Mining Act 1980*. This prohibits exploration and extraction activity without a licence or similar authority. The Government has completed a review of this Act and is considering the recommendations.

Two other Acts, the *Mine Management Act 1990* and the *Uranium Mining (Environmental Control) Act 1979*, have been repealed without review. They have been replaced by the *Mining Management Act 2001*. This regulates the management of safety and environmental risks in the mining industry. The Government completed an NCP review of the legislation following its introduction to Parliament.

The Northern Territory Government is still to respond to the review of the Mining Act and so is yet to fulfil its CPA clause 5 obligations relating to this Act. The Council will finalise its assessment of the Territory's compliance in 2003.

The Northern Territory has met its CPA clause 5 obligations relating to the Mine Management Act 1990 by repealing it and subjecting the replacement legislation to its gatekeeper process.

**Table 4.12:** Review and reform of legislation regulating mining

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Commonwealth	<i>Aboriginal Land Rights (Northern Territory) Act 1976 and Regulations</i>	Provides for the granting of land to traditional Aboriginal owners and gives certain rights over granted land, including a veto over mineral exploration.	Review completed, and report released publicly in August 1999.	The Government is considering a response to this and other reviews relating to the Act.	Council to finalise assessment in 2003.
	<i>Nuclear Safeguards (Producers of Uranium Ore Concentrates) Charge Act 1993 and Regulations</i>	Imposes a charge on uranium producers to recover cost of nuclear safeguards and protection activities.	Review by officials completed in 1997, recommending principally that the flat fee be replaced with an output-based fee. It also recommended removal of cap on fees paid by individual producers.	The Government announced its response in December 1997, accepting all recommendations but that to remove the fee cap.	Meets CPA obligations (June 2002).

*(continued)*

Table 4.12 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
New South Wales	(1) <i>Coal Ownership (Restitution) Act 1990</i> and (2) <i>Coal Acquisition Act 1981</i>	(1) Provides for the restitution of certain coal acquired by the Crown as a result of the <i>Coal Acquisition Act 1981</i> . (2) Vests all coal in the Crown.	Review unnecessary because the Acts considered not to restrict competition.	Acts superseded by the <i>Coal Acquisition Amendment Act 1997</i> and to be repealed when the Coal Compensation Board is abolished.	Meets CPA obligations (June 1997).
	(1) <i>Mines Inspection Act 1901</i> and (2) <i>Coal Mines Regulation Act 1982</i>	(1) Makes provision for the regulation and inspection of mines and regulates the treatment of the products of such mines. (2) Regulates coal mines (and oil shale and kerosene shale mines) and certain related places.	Review under way as part of a general review of mine safety regulation, expected to be completed shortly.		Council to finalise assessment in 2003.
	<i>Mining Act 1992</i>	Licensing of mineral exploration and extraction.	Licensing requirements dealt with under the Licence Reduction Program. Other restrictions considered in mine safety review above.		Council to finalise assessment in 2003.

*(continued)*

Table 4.12 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Victoria	<i>Extractive Industries Development Act 1995</i>	Searching for quarry stone prohibited without a permit. Quarrying prohibited without a work authority from the Minister.	Review completed and released in October 2001. It recommended removal of work authority. The Government is considering its responses.		Council to finalise assessment in 2003.
	<i>Mineral Resources Development Act 1990</i>	Licensees must be 'fit and proper' and intend to do work. Licence conditions including employment levels. Maximum term of licences and restrictions on renewal. Work prohibited without approved work plan. Certification of mine managers.	Review by independent consultant completed in 1997, recommending removal of subjective licence criteria, employment conditions and mine manager certification. Government accepted most recommendations at least in part.	Act amended in Spring 2000. Guidelines prepared on interpretation of licence criteria.	Meets CPA obligations (June 2001).

*(continued)*

Table 4.12 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Queensland	<i>Coal Industry (Control) Act 1948 and Orders</i>	Compulsory acquisition of coal. Price regulation. Approval required for opening, closing and abandonment of coal mines.		Repealed.	Meets CPA obligations (June 1999).
	<i>Coal Mining Act 1925</i>	Regulates the operation of coal mines, particularly health and safety issues.	Not listed for review.	Repealed and replaced by the <i>Coal Mining Safety and Health Act 1999</i> and Regulations which were subject to a gatekeeper review.	Meets CPA obligations (June 2001).
	<i>Mineral Resources Act 1989</i>	Various permits, licences and leases.	Not listed for review as Act not considered unnecessarily restrictive.		Meets CPA obligations (June 2001).
Western Australia	<i>Mining Act 1978 and Regulations 1981</i>	Prohibits mineral exploration or extraction without a licence. Term of exploration licences – 5 years. Term of extraction (mining) licences – 21 years (renewable). Minimum expenditure conditions.	Review by Department of Minerals and Energy recommended retention of all restrictions. Government endorsed recommendations in December 2000.	None required.	Meets CPA obligations (June 2001). <sup>9</sup>

(continued)

<sup>9</sup> The 2001 NCP assessment reported that the Council had assessed in June 1999 that Western Australia had met its CPA obligations relating to this Act. The assessment occurred in June 2001.

Table 4.12 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>Mining Act 1971</i>	Mining prohibited without licence. Term of exploration licences – 5 years. Term of extraction (mining) licences – 21 years (renewable).	Review underway.		Council to finalise assessment in 2003.
	<i>Mines and Works Inspection Act 1920</i>	Mine inspector may order the cessation of mining.	Review underway.		Council to finalise assessment in 2003.
	<i>Opal Mining Act 1995</i>	Mining for precious stones without authority prohibited. Term of exploration permits – 1 year. Term of extraction permit – 3 months renewable for 12 months.	Review underway.		Council to finalise assessment in 2003.
Tasmania	<i>Mineral Resources Development Act 1995</i>	Exploring or extracting minerals prohibited without licence. Term of exploration licences – 5 years. Term of extraction (mining) leases – up to 21 years.	Review by government/industry panel completed, recommending no change.		Meets CPA obligations (June 2002).

*(continued)*

Table 4.12 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Northern Territory	<i>Mining Act 1980</i>	Prohibits mineral exploration or extraction without a licence. Term of exploration licence – 6 years renewable for 2 + 2 years. Term of extraction licence – 25 years renewable.	Review complete and awaiting Government consideration.		Council to finalise assessment in 2003.
	<i>Mine Management Act 1990</i>	Regulates occupational health and safety in mining.	Act not reviewed.	Repealed and replaced by the Mining Management Act 2001 which was assessed under the gatekeeper process.	Meets CPA obligations (June 2002).
	<i>Uranium Mining (Environmental Control) Act 1979</i>	Controls uranium mining in the Alligator Rivers Region.	Act not reviewed.	See Mine Management Act.	Meets CPA obligations (June 2001).

## Fisheries

The commercial fishing industry is Australia's fourth most valuable food-based primary industry — after beef, wheat and milk. The landed value of the commercial wild catch increased from \$1.1 billion in 1989-90 to nearly \$2.4 billion in 1999-2000 (FRDC 2002). Australia's major commercially harvested species are prawns, rock lobster, abalone, tuna, other fin fish, scallops, and edible and pearl oysters. Aquaculture production is also growing rapidly, with the value of production rising from \$188 million in 1989-90 to \$602 million in 1998-99. Aquaculture is established in all States, with farmed species ranging from pearl oysters to trout. The majority of Australian production — some \$1.5 billion in 1998-99 — is exported. The value of fish and fish products consumed domestically in 1998-99 was approximately \$1.4 billion, including imports valued at \$878 million.

Fishing is also an important recreational activity in Australia. Two main industries are involved. The Australian fishing tackle and bait industry has an annual turnover in excess of \$170 million. The recreational boating industry (of which 60 per cent relates to fishing) accounts for a further \$500 million in turnover. In addition to Australian fishers, international tourists spend over \$200 million on recreational fishing in Australia each year.

This section discusses the issues facing governments; in particular, how best to develop and improve the efficiency of Australia's fishing industry while ensuring sustainable development of the resource. All governments, with the exception of the ACT, are addressing this question via reviews of their fisheries legislation under the NCP program. While most reviews have been completed, the Council has very little information on the processes and recommendations of most reviews and on governments' reform responses. Apart from Western Australia, governments have not released review reports. Further, their NCP annual reports have tended to provide little information on fisheries legislation. The Council therefore seeks more detailed information of review and reform activity in this area. It will finalise its assessment of governments' compliance with their CPA clause 5 obligations in the 2003 NCP assessment.

## Legislative restrictions on competition

Commonwealth, State and Territory governments all regulate wild fisheries.<sup>10</sup> The Commonwealth is responsible for fisheries that are 3–200

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<sup>10</sup> Approximately 60 per cent of wild fish production derives from State and Territory waters. The remaining 40 per cent is caught in Commonwealth waters.

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nautical miles off the Australian coast. State and Territory governments are responsible for coastal fisheries out to 3 nautical miles, as well as estuaries and fresh water fisheries. There are also Commonwealth–State agreements (offshore constitutional settlement arrangements) aimed at improving the management of certain fisheries. States and Territories regulate fish farming (aquaculture) via either general planning and environment laws or specific-purpose legislation.

Most wild fisheries regulation restricts competition. The main restrictions (occurring in an array of legislative and nonlegislative instruments, including primary legislation, subordinate legislation, management plans and licence conditions) are:

- restrictions on access — entry and/or exit — via licensing of fishers and their boats;
- other restrictions on access; spatial restrictions (such as closure of fisheries and depth restrictions) and temporal restrictions (such as season or weekend closures of fisheries);
- restrictions on output via total allowable catches and fishing quotas;<sup>11</sup> and
- restrictions on inputs via limits on boat size and engine power or on fishing gear and methods.

## Regulating in the public interest

The major objectives of fisheries legislation are sustainable development, equitable resource access and economic efficiency. These objectives require governments taking measures, at minimum cost to the community, to:

- sustain fish stocks to maximise their economic benefits in perpetuity;
- protect marine environments and marine biodiversity; and
- distribute the benefits of the resource appropriately among commercial, recreational and indigenous fishers.<sup>12</sup>

Governments regulate the use of wild fisheries principally because unfettered competition can lead to overfishing, overcapitalisation and, ultimately, lower economic, environmental and social returns from the fishery than otherwise

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<sup>11</sup> There is increasing use of individual transferable quotas. These are in place in the south east trawl fishery, the south east non-trawl fishery, and the southern bluefin tuna fishery. Output controls are applied in the Bass Strait central scallop zone fishery and the southern shark fishery.

<sup>12</sup> Occasionally, fisheries regulation also seeks to exert export market power where the potential for such power exists.

may be obtainable. Economic theory suggests that these outcomes are the almost inevitable consequence of 'open access' fisheries (fisheries in which there are no limits on the catch of the fish resource). Even where there are restrictions on the number of fishers allowed access to the fishery or on fishing equipment and/or methods, fishers have an incentive to harvest as much as possible of the available resource before their competitors. There is a constant incentive for fishers to find new ways in which to circumvent access controls so as to increase fishing effort. Similarly there are incentives to fish at the start of a season because stocks may be later depleted. For these reasons, fisheries regulation is increasingly moving toward approaches based on quasi-property rights, which determine and allocate a 'total allowable catch'. The quasi-property rights approach can avoid, in theory, the above negative incentives, though substantial difficulties with its practical implementation can arise.

There is some evidence of overfishing in Australia. The Organisation for Economic Co-operation and Development's (OECD) reporting on Commonwealth-managed fisheries describes, for example, four fisheries as overfished, ten as fully fished, one as underfished and 15 as uncertain (OECD 2001). (The OECD did not report similar evidence about State-managed fisheries.) These observations about Australian fisheries are consistent with overseas experience. In the United States, for example, overcapitalisation and overfishing are empirically well established.

- Edwards and Murawski (1993) found that the economic benefits derived from the New England groundfish fishery could be increased by US\$150 million annually, but that this would require a 70 per cent reduction in fishing effort.
- Ward and Sutinen (1994) estimated that only one third of the 1988 fleet operating the Gulf of Mexico shrimp fishery would be required to harvest the same quantity of fish — that is, two thirds of the capital employed could be re-deployed to other uses without reducing total product.

The likely existence of overfishing emphasises the need for management practices to ensure sustainability. Appropriate management practices may involve significant limits on entry to fisheries and on the allowable catch. A key conclusion of the OECD Committee for Fisheries, for example, is that management regimes in some overcapitalised fisheries need to impose significant reductions in the allowable catch in the medium term, with the likely result being fewer participants in the fishery (OECD 2000, p. 188).

Such management policies do not conflict with NCP principles. The CPA clause 5 guiding principle is that competition should be restricted only where necessary to maximise the net benefit to the community as a whole. Restrictions on fishing effort and policies that lead to fewer fishers are clearly consistent with this principle. In all fisheries, including those that are overexploited, the key NCP objective is to maximise competition within the framework of responsible long-term resource management.

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## Appropriate regulation of fisheries

Many countries have recognised over the past two decades the need to reform their mechanisms for regulating fisheries to ensure optimal use of the resource. There is now widespread international recognition of the nature of the questions and the challenges facing fisheries management. The OECD Committee for Fisheries, in commenting on the appropriate direction of reform, stated that:

*... to alleviate fisheries problems it would be useful to introduce rights based management systems (e.g. transferable individual licences, individual quotas, and exclusive area user-rights). For example, individual quotas result in improved stock conservation, reduction in overcapacity and race-to-fish, and hence in overall better economic performance. However, rights based systems require governments to establish and maintain a legal framework for the rights and may increase administrative costs. Furthermore, the implementation of such systems may cause structural adjustment consequences, including lower employment opportunities, and distributional conflicts. (OECD Committee for Fisheries 1996, p. 2)*

The direction of change internationally is towards the adoption of output controls to either supplement or replace input controls. Input controls are measures such as licensing arrangements and restrictions on gear and fishing methods. Output controls involve determining a fishery's 'total economic catch' — that is, the level of catch at which profit (that is, revenue minus costs) is maximised when the most efficient fishing methods are used — and allocating this catch among fishers. The total economic catch is necessarily a long-term concept.

Some countries have moved quickly to adopt fisheries management practices based on output controls. The New Zealand Government introduced the Quota Management System in 1986. This system controls the total commercial catch from all the main fish stocks within New Zealand's 200 nautical mile Economic Exclusion Zone (Government of New Zealand 2002). More commonly, the movement toward output controls has occurred gradually, often fishery by fishery. This gradual approach usually reflects the need to respond to the circumstances of individual fisheries in designing or redesigning management approaches. Further, governments may be reluctant to disturb substantial entrenched interests.

The OECD has noted emerging evidence of the benefits of moving towards output-based regulation, indicating that the gains predicted by economic theory are achievable in practice. In the United States, where 'most fisheries can probably be characterised as overcapitalised, with too many vessels, too much gear and too much time spent at sea harvesting fish at a higher than optimal cost per unit of effort' (NMFS 1996, p. 12), the National Marine Fisheries Service found the following benefits from output regulation.

- The introduction of individual transferable quotas to the Atlantic surf clam fishery in 1990 led to a 54 per cent reduction in the fleet within two years, while total landings increased slightly. An annual resource rent of \$11 million accrued to the industry following the reform. Previously this rent was dissipated.
- The introduction of individual transferable quotas to the south east wreckfish fishery in 1992 reduced the fleet from 91 vessels to 21 within three years. While total landings declined they also became more constant throughout the year (NMFS 1996, pp. 13–14).

The above evidence suggests there is substantial potential to capture significant community benefits by improving fisheries management and, in particular, by moving from input controls towards quasi-property rights approaches. The complexities of the industry, however, require reform to be based on a good understanding of the circumstances of individual fisheries.

One complexity is the multispecies fishery. In this type of fishery, different fishing methods may substantially change the proportions of the different species contained within the total catch. The most economic means of harvesting one species may yield suboptimal results for another species. A further consideration is the environmental impact of different fishing methods. Some methods may be environmentally detrimental, for example, because they increase the bycatch of noncommercial species, perhaps to levels that threaten the sustainability of those species. Other environmental problems may include disturbance of the marine environment more generally, with negative consequences for plant and fish habitats. A range of input controls may be required, often in conjunction with individual transferable quotas, to ensure that the exploitation of the fishery optimises all relevant social values.

Fisheries management also needs to recognise possible spillover effects of changing the management of individual fisheries. These effects may occur, for example, where boats and crews displaced from one fishery by regulatory change seek alternative uses and increase pressures on other fisheries, potentially offsetting the gains from improved management in the original fishery. It is thus important to ensure broad-based fisheries management decisions, rather than a piecemeal approach.

## Tailoring controls to individual fisheries

Approaches to fisheries legislation, as well as legislative reform, must account for the considerable variability among individual fisheries. The main dimensions of this variability include the level of stocks, the seasonality of the fishery and the mobility of its fish population. The unit value of the fish species under consideration and the bycatch characteristics of the fishery are also important.

Keeping these factors in mind, it is possible to generalise about the fishing controls that are most appropriate for particular fisheries. Table 4.13 outlines how the different types of fishing controls may impede market competition. It suggests the types of fishery (including examples of specific species) for which each control may be most applicable. In principle, controls that define or closely resemble property rights impose fewer restrictions on market competition. Property rights controls are not always feasible, however, and may be too costly to apply in particular circumstances.

Table 4.13: Fishing controls and their impact on market competition

<i>Class of control</i>	<i>Impediment to market competition</i>	<i>Best suited for fisheries ...</i>
Property rights — freehold title or tradeable leases	No necessary impediments to market competition	... where competitors can be excluded and fish do not migrate (or can be prevented from migrating) — oysters, pearl and abalone
Output controls — individual transferable quota or catch shares	Control on production levels High administration, enforcement or compliance costs	... that are single species, of high unit value and with stable and well known stock levels — rock lobster and tuna
Access controls — limited number of tradeable licences, spatial and temporal restrictions	Possible control on output levels Possible control on inputs Possible fishery closures or seasonal closures	... that are lower value, or multispecies, or where recruitment is variable, or species are not well understood, or stocks are depleted (meaning access controls are usually combined with input controls) — prawns and mixed trawl
Input controls — boat and/or gear controls	Restrictions on types of input Possible control on production levels Significant administration, enforcement and compliance costs	

Table 4.13 highlights a number of matters. First, while property rights (or quasi-property rights) approaches are theoretically superior, substantial practical difficulties arise where stock levels are relatively uncertain or highly variable. The setting of a total allowable catch as the basis for individual transferable quotas, for example, requires a sound knowledge of stock levels and characteristics if the total allowable catch is to be consistent with sustainability of the resource. Added difficulties arise in determining the appropriate total allowable catch where stock levels are highly variable.

Second, the total allowable catch approach can pose substantial difficulties in multispecies fisheries because an appropriate total allowable catch for one species may be associated with an unsustainable catch of another species in the same fishery.

Third, quasi-property rights approaches are likely to entail high levels of administration, enforcement and/or compliance costs. These costs undermine the usefulness of these approaches in managing fisheries of low value species, and possibly also small fisheries.

Conversely, input controls can also be associated with relatively high administration and enforcement costs. There must be an adequate level of enforcement activity to ensure satisfactory compliance. This enforcement may require substantial effort, because the potential private gain to fishers in departing from specific input controls can be extremely significant. In addition, regulators must maintain an adequate level of surveillance of actual fishing practices, because there is a constant incentive to seek more productive fishing methods that were not envisaged when input controls were designed. These unforeseen methods may undermine the effectiveness of the existing controls. The design and implementation of input controls must be dynamic, therefore, and involve vigilant monitoring and frequent adjustments of the control measures.

## Recovering the cost of regulation

As noted above, some fisheries controls can have substantial implementation costs, in relation to administration, monitoring and enforcement costs. In some cases, significant research costs may also be incurred in obtaining the information needed to guide policy choices. Equity and efficiency considerations suggest these costs should be recovered from the regulated industry, particularly where the costs are significant.

Cost recovery is necessary to avoid allocative distortions, because the costs of the regulatory system are conceptually an element of the costs of production. Appropriate regulation is necessary for sustainable production in the long term and, therefore, the cost of regulation should be considered part of the cost of producing the fishery's output. Failure to reflect regulatory costs in the final price of the product would distort market competition among the products of the fishery and its competitors (whether the competitors are the products of other fisheries or are non-fish products). The design of the cost recovery mechanism must also be efficient and equitable, ensuring appropriate cost sharing among those who fish the fishery and taking steps to minimise the costs incurred.

## Balancing the different uses of the fishery

Achieving an appropriate balance between different potential uses of the fishery is a further challenge. The two main uses of a fishery are generally commercial and recreational fishing. Each can be a significant commercial activity and each can exert substantial environmental pressure on a fishery. The extent to which these different uses translate into competing demands varies among fisheries, with some fisheries being primarily attractive to one or the other use. Deep sea fisheries, for example, may be less accessible to recreational fishers and thus less attractive. For most fisheries, however, the two types of demand will compete strongly.

Balancing competing uses is also complicated by differences between commercial and recreational fishing in the notion of 'output'. For the former, output is measured by the value of fish landed, while a substantial part of the total output of recreational fishing derives from the intrinsic (entertainment) value of participating in the fishing and associated activities. It is difficult to quantify the financial value of intrinsic outputs, complicating the task for governments of achieving an equitable balance between the sectors. For some fisheries, the protection of indigenous fishing rights is also an important element of the balance that governments must strike in managing competing interests.

While these issues are significant for the overall regulation of fisheries, they are unlikely to raise substantive NCP questions. The key competition questions revolve around ensuring the conditions for nondiscriminatory competition, within an access and sustainability framework that guides the long-term management of the fishery.

## The need for careful analysis in regulation making

Making the right choice of restriction or combination of restrictions is crucial to sound fisheries management. The consequences of poor choice include:

- endangering the fishery, leading to a degraded environment, loss of livelihood for fishers and loss of a preferred choice fish product for consumers;
- inhibiting technological changes that may offer improved returns to fishers and better value fish products to consumers; or
- impeding the entry of new fishers and forgoing new investment in regional economies.

Fisheries differ substantially, which means careful analysis must underpin the choice of management policy or policies to meet the requirements of individual fisheries. The complexity of fisheries management and controls suggests that primary legislation should provide for management policies to be developed via NCP-like processes to ensure regulations meet the needs of individual fisheries while placing least restriction on the activities of fishers.

## Review and reform activity

Governments are addressing their CPA clause 5 review and reform responsibilities within the context of their longer term efforts to reform fisheries management in recognition of both sustainability and efficiency issues. The overarching fisheries legislation being reviewed under the NCP reflects this longer term activity: the general fisheries Acts in all jurisdictions

but one were enacted in the 1990s and the remaining Act (in South Australia) was enacted in 1982.

Despite almost all jurisdictions having recently enacted new legislation, changes to the management of fisheries have been very gradual. Governments have been particularly concerned with minimising the disruption of remote and regional communities, many of which depend quite heavily on the fishing industry. Consideration of the impact of reform on affected regions and communities is clearly a legitimate aspect of governments' NCP work. The gradual nature of reform to date, however, has meant that NCP reviews are identifying a need for substantial further reform. The Queensland review, for example, recommended a separate examination of each fishery, applying resource management principles developed by the NCP review and considering relevant competition issues.

Despite most governments having completed their NCP reviews of fisheries legislation (and some reviews having been completed for a considerable time), the Council has little information on review recommendations and governments' reform responses. With the exceptions of Western Australia and the ACT, governments have neither released review reports nor provided detailed information about the review and reform of their fisheries legislation. With the exception of the ACT, which the Council considers has complied with CPA clause 5 in relation to its fisheries legislation, the Council will finalise the assessment of all governments' CPA clause 5 compliance in 2003.

## Commonwealth

The Commonwealth Government began reviewing its principal fisheries legislation (the *Fisheries Management Act 1991*) and related legislation in October 1998. The review by a committee of Commonwealth officials was initially scheduled for completion in November 2000. The Commonwealth now expects to complete the review during 2002 and to consider review recommendations in 2002 or early 2003.

The Commonwealth completed a review in August 1999 of the *Torres Strait Fisheries Act 1984*, which regulates all fishing within the Australian jurisdiction of the Torres Strait Protected Zone (established under the Torres Strait Treaty between Australia and Papua New Guinea). The report was presented to the Torres Strait Protected Zone Joint Authority in March 2000. The authority referred the review findings and recommendations to the Torres Strait fisheries consultative and advisory committees for consideration. The Commonwealth is considering the review and expects to release its response in 2002.

## New South Wales

New South Wales commissioned the Centre for International Economics to review its *Fisheries Management Act 1994* under the supervision of an

interagency committee. The review report was submitted to the Minister for Fisheries in May 2001. The review found the legislation provides a net public benefit. It recommended amending the objects of the Act to recognise socioeconomic benefits. New South Wales implemented this recommendation via the *Fisheries Management Amendment Act 2001*.

The Council has no information about other recommendations by the review or the New South Wales Government's response. The Government states that it expects to respond to all other recommendations by 30 June 2002 (Government of New South Wales 2002). The Council will therefore finalise its assessment of New South Wales's compliance with its CPA clause 5 obligations in 2003. In this context, the Government will need to provide information on the review recommendations, the evidence and analysis underlying the recommendations, and details of proposed or implemented reforms of the legislation.

## Victoria

The Victorian *Fisheries Act 1995* and associated regulations, Orders in Council, Ministerial guidelines and other quasi-regulatory tools regulate commercial and recreational fishing and aquaculture. The Victorian review of the Fisheries Act in 1999 found that its regulatory regime provides a 'tool box' for fisheries management. It noted that the several restrictions in the Act, — which fall into the broad categories of resource definition, access controls, input controls, output controls and security of access rights — 'could reduce the efficiency of the industry but that generally the Victorian fishing industry is relatively efficient' (Department of Treasury and Finance [Victoria] 2002, p. 72).

The Government has responded to the review recommendations, accepting recommendations that apply generally to fisheries to:

- retain the conditions associated with access licences (for example, transferability);
- cease fisheries that do not have transferable licences (as licence holders exit or as the fishery converts to a transferable licence);
- consider the allocation of new licences and quota by mechanisms such as auctions, tender or ballot, to ensure efficient allocation of licences;
- review existing limits on the number of persons employed;
- introduce full cost recovery, subject to formal policy development; and
- consider imposing royalties or rent taxes, subject to Government policy.

The Government did not accept a review recommendation that annual access licences should be granted for longer periods (such as up to five years). The review argued that annual renewal involves additional transaction costs and,

despite being largely automatic, increases uncertainty. The Government considers, however, that the current issue of annual licences is an automatic renewal (subject to certain conditions) and that the fee structures are more efficiently managed under an annual regime.

In addition to the recommendations that apply to fisheries generally, the review made recommendations pertaining to specific fisheries. The Victorian Government has generally accepted these recommendations, as detailed in the following sections.

#### Rock lobster and abalone fisheries

The Government accepted the review recommendation to move from a system of input controls (pots) to output controls (quota) in the rock lobster industry and implemented an individual transferable quota system for rock lobster in November 2001. For abalone, the Government accepted that the individual transferable quota system should be retained, because there is no less restrictive alternative. The minimum quota holding is to be reduced (to one unit of quota) and the maximum limit of a quota holding is to be abolished, to enable licence holders to achieve scale and other economies.

#### Scallop fishery

The Government accepted the review recommendation that the current scallop fishery management arrangements be retained, because there is no feasible less restrictive alternative.

#### Bays and inlets and other fisheries

The Government accepted the recommendation that control mechanisms be retained for now, but that alternative output control mechanisms should be evaluated for some species. This may result in legislative reform, which would occur following consultation and negotiation with stakeholder groups.

The Council will seek additional information from the Victorian Government on the nature of the review and reform activity foreshadowed in these areas, and on the proposed timelines for any further reforms. It will consider these matters in the 2003 NCP assessment.

## Queensland

Queensland completed a public review of the *Fisheries Act 1994* and its regulations in early 2000. The Cabinet endorsed the results of the review in October 2001. The Queensland Government stated that the review's general conclusion was that there is a 'need for some regulatory reform' and that its approach would include:

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*... examining each of the State's fisheries on an individual basis — recognising their diverse characteristics — and applying the resource management principles developed as part of the review process and the NCP requirements in determining and justifying the appropriate level of intervention for the fishery.* (Government of Queensland 2002, p. 10)

The Government's statement suggests that the review did not make specific recommendations for individual fisheries, providing instead a framework for a subsequent set of reviews of individual fisheries. Given the substantial differences between fisheries, such an approach may be appropriate. It leaves questions, however, about the nature of the resource management principles developed by the review, and about the processes and timelines for the individual fishery reviews. Given that CoAG set a target date of 30 June 2002 for completion of all NCP reviews and appropriate reforms, the Council expects Queensland to establish clear timelines for the fishery reviews and for implementing reform recommendations. In 2003 the Council will seek further information on these matters to finalise the assessment of Queensland's compliance with its CPA clause 5 obligations.

## Western Australia

Western Australia completed reviews of the *Fish Resources Management Act 1994* and the *Pearling Act 1990*. It has publicly released the report of the former review, but not the latter. It is the only jurisdiction to have released a fisheries review report.

### Fish Resources Management Act

The review of the Fish Resources Management Act recommended that the Government retain most of the existing restrictions, including quotas. The review also recommended clarification of the Act's objectives via legislative amendment, to focus on the Government's environmental and resource protection objectives. Finally, the review recommended integrating NCP principles into the ongoing fisheries management review cycle.

In terms of immediate reforms to existing restrictions, the review's major recommendations relate to the rock lobster fishery. The Western Australian Government has accepted a number of review recommendations and expects to have reforms in place by the start of the 2003 season. The main changes to be introduced are:

- removal of the cap of 150 lobster pots per boat, allowing economies to be reaped by using larger vessels;
- removal of the limit on the issue of domestic lobster processing licences;  
and

- permission for processing licence holders to establish at multiple locations.

The review also found that 'the potential net benefits from a possible restructuring of the Western Rock Lobster Managed Fishery into output-based management regime [sic] appear to be material' (Fisheries Western Australia 1999, p. 7). In this context, the review report recommended that the Government commission an independent update of earlier work on the net benefits of restructuring the management regime. The Council has no information on the Government's response to this recommendation. Given the review report found a potential 'material' net benefit to the fishery from the restructure of the management regime, the Council will look in 2003 for Western Australia to provide information on how it has progressed this recommendation.

### Pearling Act

The review of the Pearling Act recommended substantial regulatory change. Specifically, it recommended:

- removing minimum quota units attached to licences;
- decoupling pearl farming licences from pearl fishing licences;
- auctioning wildstock quotas;
- removing hatchery quotas;
- codifying in regulation the criteria for fishery management decisions; and
- establishing an independent review tribunal.

The Western Australian Government advised that it has accepted most of the recommendations of the NCP review, but not those to remove limits on hatchery quotas and to auction wildstock quotas. The Government stated that it rejected these recommendations on the basis of an ACIL Consulting (ACIL) study, which was prepared for the Pearl Producers' Association and presented as a submission to the NCP review. Western Australia's review has not been made available to the Council and no information has been provided as to the reason for it reaching a different conclusion on these matters from that reached by ACIL.

In regard to hatchery quotas, the ACIL study argued that the existing restrictions have had the effect of slowing the rate of growth of supply, notwithstanding that 'supply has effectively been determined by non-regulatory factors' because '...maximum potential supply (estimated to be around 720 kan) is above the current levels of supply (around 530 kan in 1997) and quotas will not become binding for a number of years yet' (ACIL 1999, p. 7). The ACIL study argued that quota should generally be set above existing levels of supply, to allow for market expansion. On this view, the key purpose of the quota is that:

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*It further fosters the perception that the supply of Australian South Sea pearls to world markets is constrained to grow at a rate which can be absorbed by the market without eroding prices received to such an extent that aggregate revenues will begin to fall. (ACIL 1999, p. 15)*

Thus, the ACIL study argued that the existence of the quota assists in maintaining the scarcity premium element of current prices via its impact on expectations of future demand growth. ACIL cited a further study that concludes that wholesale pearl buyers believe that the quota system forms a major constraint on the supply of Australian pearls (ACIL 1999, p. 41). In addition, ACIL cited the experience of other countries (Japan, China, Tahiti) where major supply increases were associated with sharp declines in price, leading to falls in aggregate revenue (ACIL 1999, p. 55). It is not clear, however, why such an expectations effect would endure when, in ACIL's submission, the real constraints on the supply of Australian pearls are nonregulatory in nature.

The ACIL study argued that the supposed price supporting effect of the quotas provides a net benefit to Australia because the vast majority of pearls are sold overseas. ACIL analysed the likely size of this effect, estimating the annual benefit of the hatchery quotas at between \$16–25 million with a most likely annual value of \$21 million (ACIL 1999, p. 11 and p. 98). This analysis is based on the assumption that the current quota is a binding constraint on supply. It is not clear how this result relates to the ACIL contention that the current quota is not, in fact, the determining factor in constraining supply.

In relation to wildstock quota, the Government has agreed that the practice (allowed by the Act) of giving increases in quota to incumbents, rather than to auction them or put them out to tender, is in the public interest. The ACIL study stated that the wildstock quotas and the regulations governing entry into the industry 'can be justified in terms of achievement of the conservation objective'. The study argued that, when quotas were imposed on the industry, it was equitable that they were allocated to the existing operators who had developed the industry, and that any inefficiencies would be addressed because wildstock licences are transferable and quota units can be traded between licensees. The study noted also that new licences/quotas issued after enactment of the Pearling Act were allocated via a tender process based on assessment of the likely success of proposals and their contribution to the development of the region rather than a cash-bidding tender process (ACIL 1999, pp. 72-3). The ACIL study considered, nonetheless, that any future decision to increase the total allowable catch should involve consideration of options that result in the most efficient and equitable method of allocating shell including an open competitive tender process.

The Western Australian Government, while conceding that there is some dispute about aspects of the ACIL analysis, concluded there is a substantial risk in removing hatchery quotas, particularly in the current environment of declining pearl prices. The Government indicated that it would revisit this matter in 2005 when the current hatchery policy expires. The Government also stated that it accepted the public interest argument that auctions for wildstock pearl licences 'would not result in better utilisation of the resource

and could pose a threat to the conservation of the pearl beds' (Department of Treasury and Finance, Western Australia 2002b, p. 21).

The Council considers that Western Australia has made strong progress towards meeting its CPA clause 5 obligations on fisheries legislation. For the 2003 NCP assessment, however, the Council will need further information from the Western Australian Government in relation to the restructuring of the western rock lobster managed fishery and the implementation of the changes to the Pearling Act. The Council will also need information on the basis for the conclusions reached by the review of the Pearling Act in relation to hatchery quotas, and information on the Government's view on the medium term future of these arrangements.

## South Australia

South Australia's principal fisheries legislation is the *Fisheries Act 1982* — the oldest major piece of fisheries legislation in Australia. The Act is under review by a group of officials, which released an issues paper for comment during 2001. The Council understands that a 'draft final report' has been produced but not yet considered by the Government. The Council has no information on the review process or recommendations. For the 2003 assessment, it will need information from the South Australian Government on these matters and the Government's response.

The South Australian Government has decided to repeal both the *Fisheries (Gulf St. Vincent Prawn Fishery Rationalization) Act 1987* and the *Fisheries (Southern Zone Rock Lobster Fishery Rationalization) Act 1987* following reviews. A Bill is before Parliament to repeal the latter Act. Repeal of the former Act is pending settlement with licensees. Repeal of the legislation will address South Australia's CPA clause 5 obligations.

## Tasmania

The major Tasmanian Acts governing fisheries are the *Living Marine Resources Management Act 1995*, the *Marine Farm Planning Act 1995* and the *Inland Fisheries Act 1995*. These Acts contain a range of restrictions on competition. The Tasmanian Government advised that reviews of all three Acts have been completed. The reviews of the first two Acts recommended retaining all restrictions. The review of the Inland Fisheries Act recommended retention of most restrictions, but proposed some simplifications, including abolishing some licence classes. The Government has indicated that it will implement these recommendations.

The Council has no information on the review processes, the detail of the review's recommendations or the public interest evidence supporting the restrictions in the legislation. For the 2003 NCP assessment, the Council will need the Tasmanian Government to provide information on these matters and on the public interest evidence supporting restrictions in the legislation.

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## The ACT

In 2000 the ACT passed the *Fisheries Act 2000*, which replaced the former *Fishing Act 1967*. The Government did not review the 1967 legislation. It stated that it considered competition issues in the 2000 Act via its legislation gatekeeper process.

The objects of the *Fisheries Act 2000* are to:

- conserve native fish species and their habitats;
- manage sustainably the fisheries of the ACT by applying the ecologically sustainable development principles mentioned in the *Environment Protection Act 1997*, s. 3(2);
- provide high quality and viable recreational fishing; and
- cooperate with other Australian jurisdictions in sustaining fisheries and protecting native fish species.

There is no commercial fishing from public waters in the ACT, although the Act provides for the possibility of commercial fishing in the Territory.

The legislation provides for the use of disallowable instruments as a form of regulatory control.<sup>13</sup> The ACT Government advised that its principal reason for using disallowable instruments is to enable greater flexibility in responding to changing environmental conditions. The ACT considered that the most likely changes will be the imposition of catch limits on fishing of a species that becomes threatened, or the relaxation of catch limits on a species if the population recovers sufficiently to allow further exploitation. It is also possible that there will be technological advances that result in new fishing gear being allowed for use in the ACT's rivers.

Current limits on fishing gear are directed at sustaining recreational fishing. In most places in the ACT, an angler may use two rods or hand lines, up to five hoop nets, and 10 baited lines for taking yabbies. In designated waters where trout spawn, fishers may use only one rod. These limits are based on an assessment of what is reasonable to prevent overfishing and to minimise unintentional damage to threatened species or spawning trout. In accordance with the conservation aims of the Act, limits for five species of threatened species (trout cod, Murray River crayfish, Macquarie perch, silver Perch and two-spined blackfish) are set at zero. Limits for the popular angling fish Murray cod, golden perch and rainbow/brown trout are set at two, five and five respectively.

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<sup>13</sup> A disallowable instrument is a statutory instrument. It provides for administrative decision-making but with the condition of Parliamentary oversight, because instruments must be notified to the ACT Legislative Assembly.

The Council acknowledges that the ACT does not have a commercial fishing industry and that the Fisheries Act is aimed primarily at the conservation of fish and their habitats. The Council considers that the ACT has complied with its CPA clause 5 obligations in this area.

## The Northern Territory

The Northern Territory has completed a review of the *Fisheries Act 1996*. The Northern Territory Government is expected to consider its response to the review in October 2002. The Council has no information on the review process or on the review recommendations. For the 2003 NCP assessment, it will need information from the Northern Territory Government on these matters and the Government's response.

The following table summarises NCP review and reform activity in each jurisdiction, as well as the Council's assessment of the current status of each jurisdiction in relation to CPA clause 5 obligations relating to fisheries legislation.

Table 4.14: Review and reform activity of legislation regulating fisheries

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Commonwealth	<i>Fisheries Management Act 1991</i>	Licensing of commercial fishers. Permits for fish receivers. Input controls on boats, gear and fishing methods. Output controls such as total allowable catches, individual transferable quota (transfer of which is subject to various restrictions), size limits, prohibitions on taking of certain species and restrictions on bycatch.	Review by officials commenced in October 1998. Review was to be completed in November 2000, but completion has been delayed until 2002.	The Government's response is expected to be completed before the end of 2002.	Council to finalise assessment in 2003.
	<i>Torres Strait Fisheries Act 1984</i>	Licensing of community and commercial fishers. Wide Ministerial powers to: <ul style="list-style-type: none"> <li>prohibit taking of certain species;</li> <li>prohibit taking of fish under certain sizes; and</li> <li>impose a variety of input controls.</li> </ul>	Reviewed was completed in 1999 by Commonwealth and Queensland officials. It recommended: <ul style="list-style-type: none"> <li>setting a new statement of objectives for the Act;</li> <li>maintaining the distinction between community and commercial fishing;</li> <li>retaining licensing of fishing; and</li> <li>retaining wide Ministerial powers to regulate fishing.</li> </ul>	The report was presented to the Torres Strait Protected Zone Joint Authority in March 2000. The authority noted the findings and recommendations of the review and referred these to the Torres Strait fisheries consultative and advisory committees for consideration.  The Government is considering its response (expected in 2002) to the review.	Council to finalise assessment in 2003.

*(continued)*

Table 4.14 continued

<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>Fisheries Management Act 1994</i>	Licensing of fishers. Access (via share ownership) to share-managed fisheries. Input controls on boats, gear, crew levels and fishing methods. Output controls such as total allowable catches, bag limits, size limits and prohibitions on taking of certain species.	Review by independent economic advisers, supervised by interagency committee, was completed in May 2001.	Legislation to amend objects of Act passed. Annual report for 2002 states that the Government anticipates responding to remaining recommendations by 30 June 2002.	Council to finalise assessment in 2003.
Victoria	<i>Fisheries Act 1995</i>	Licensing of commercial and recreational fishers. Input controls on boat size, gear and fishing methods. Output controls such as total allowable catches, individual transferable quota and bag and size limits.	Review was completed by independent economic advisers in 1999. It recommended: <ul style="list-style-type: none"> <li>retaining access licences but for longer periods and with automatic renewal;</li> <li>introducing full cost recovery;</li> <li>considering royalty or rent taxes to limit fishing;</li> <li>removing restrictions on quota transfers and holdings for abalone; and</li> <li>replacing input controls with output controls for rock lobster.</li> </ul>	The Government has accepted all general recommendations except longer term access licences with automatic renewal. The recommended replacement of input controls with output controls in lobster fishery was implemented 2001. The recommendation for evaluation of alternative output control mechanisms for some bay/inlet fisheries is to be implemented progressively on an Act by Act basis.	Council to finalise assessment in 2003.

*(continued)*

Table 4.14 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Queensland	<i>Fisheries Act 1994</i>	Licensing of fishers and crew.  Input controls on boat and gear.  Output controls such as total allowable catches, individual transferable quotas and bag and size limits.	Review completed. Review report endorsed by Cabinet in October 2001.	Recommendations appear to have been accepted, but implementation action not known.	Council to finalise assessment in 2003.
Western Australia	<i>Fish Resources Management Act 1994</i>	Licensing of fishers.  Prohibitions on market outlets.  Input controls on boat, gear and fishing methods.  Output controls such as total allowable catches, quota and bag and size limits.	Review completed in 1999. It recommended retaining existing restrictions except for the Western Rock Lobster Managed Fishery, where it recommended an assessment of the net benefit of moving to an output controls-based regime. It also recommended steps to embed NCP principles in the ongoing cycle of fisheries management review.	Recommendations were accepted. Rock lobster fishery reforms are to be in place for the 2003 season. Objectives are to be clarified by legislative amendment. Reform of lobster processing provisions is also to be implemented.	Council to finalise assessment in 2003.
	<i>Pearling Act 1990</i>	Licensing of pearling and hatcheries.  Minimum quota holding for pearling licences.  Requirement that hatchery licensees must also hold pearling licence.  Wildstock quota.  Hatchery quota.  Prohibition on hatchery sales to other than Australian industry.	Review completed in 1998. It recommended: <ul style="list-style-type: none"> <li>• removing minimum quota holdings;</li> <li>• decoupling pearl farming licences from pearl fishing licences;</li> <li>• auctioning wildstock quotas;</li> <li>• removing hatchery quotas;</li> <li>• codifying in regulation the criteria for fishery management decisions; and</li> <li>• establishing an independent review tribunal.</li> </ul>	Recommendations were accepted and are to be implemented, with the exception of the auctioning of wildstock quota and the removal of limits on hatchery quota.  There has been no implementation action to date.	Council to finalise assessment in 2003.

*(continued)*

Table 4.14 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>Fisheries Act 1982</i>	Licensing of fishers and fish farmers. Registration of boats and fisher processors. Input controls on gear and fishing methods. Output controls such as catch limits, size limits and prohibitions on taking of certain species.	Review by officials is nearing completion: a 'draft final report' has been produced.		Council to finalise assessment in 2003.
	<i>Fisheries (Gulf St Vincent Prawn Fishery Rationalization) Act 1987</i>	Imposition on remaining licence holders of the cost of compensating those who surrendered their licences.	Review by officials completed in 1999. Act has achieved the objective of reducing licence numbers.	Act is to be repealed once settlement with remaining licence holders is finalised.	Council to finalise assessment in 2003.
	<i>Fisheries (Southern Zone Rock Lobster Fishery Rationalization) Act 1987</i>	Prohibition on licensees from transferring their licences. Imposition on remaining licence holders of the cost of compensating those who surrendered their licences.	Review by officials completed. Act has achieved the objective of reducing licence numbers.	Act was repealed.	Meets CPA obligations (June 2002).
Tasmania	<i>Living Marine Resources Management Act 1995</i>	Licensing of fishers, handlers, processors and marine farmers. Input controls on gear, vessel operations and handling and storage standards. Output controls such as quotas, size limits and species.	Review completed. It recommended retaining all restrictions.		Council to finalise assessment in 2003.

*(continued)*

Table 4.14 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Tasmania (continued)	<i>Marine Farming Planning Act 1995</i>	Prohibition on marine farming occurring outside marine farming zones.  Requirement to have a lease to operate a marine farm.	Review completed. It recommended retaining all restrictions.		Council to finalise assessment in 2003.
	<i>Inland Fisheries Act 1995</i>	Licensing of commercial fishers and fish farms.  Registration of private fisheries, fish processors and sellers.	Review completed.	Recommendations to be implemented.	Council to finalise assessment in 2003.
ACT	<i>Fisheries Act 2000</i>	Disallowable instruments.  Limits on fishing gear.	Act was considered via legislation gatekeeping process.	New legislation.	Meets CPA obligations (June 2002).
Northern Territory	<i>Fisheries Act 1996</i>	Licensing of fishers.  Input controls on vessels, gear, fishing methods and landings.  Output controls such as total allowable catches, size and bag limits, and prohibitions on taking of certain species.	Review completed. Recommendations expected to be considered by the Government in October 2002.		Council to finalise assessment in 2003.

## Forestry

Native forest covers 164 million hectares or 21 per cent of Australia's land area (ABS 2002). Of this, 76 per cent is on public land and 23 per cent on private land. Of publicly-owned forests, 16 per cent is held in conservation reserves, 14 per cent on other Crown land, 10 per cent managed for multiple uses including timber production, and 60 per cent on pastoral leases. Almost 70 per cent of Australia's native forest is therefore under some form of private management.

Plantations account for 1.5 million hectares. Two thirds of these are softwood (mainly *pinus radiata*) and the balance hardwood (eucalyptus). Ownership arrangements are diverse encompassing sole public or private ownership and joint ventures.

Table 4.15: Forest estate by State/Territory and type

Type ('000 ha)	NSW	Vic	Qld	WA	SA	Tas	NT	ACT
Public native forest	17 641	6532	39 990	33 207	9538	2233	18 182	121
- conservation reserve (%)	28	46	9	13	41	35	0	89
- other Crown land (%)	10	3	5	40	4	8	2	-
- pastoral lease (%)	52	1	76	42	55	-	98	9
- multiple use incl wood (%)	10	51	11	5	0	58	-	2
Private native forest	6938	1183	9182	1502	852	901	16 694	-
Other native forest	2117	1	54	90	399	-	3	-
Plantation	319	319	191	314	136	185	7	15

Note: Other Crown land includes land reserved for educational, scientific, defence or other institutional uses. Multiple use Crown land is land managed for wood and other values. Other native forest land is land where tenure is unresolved.

Source: National Forest Inventory 2001 via ABS.

**Australia's native and plantation forests provide a range of benefits to the community.**

Forests are a reservoir of biological diversity and functioning ecosystems. They provide protection for soils and water resources, and are increasingly being recognised for their potential as carbon sinks. They provide for a vast array of recreational and educational activities.

Forests and plantations are the basis for important wood-based industries which produce sawn timber, fibreboard, plywood and paper. In 1999-2000 the wood and paper product industries generated \$13.7 billion of turnover, including exports of \$1.6 billion, and employed 74 500 workers as at 30 June 2000. Other forest-related industries produce honey, wildflowers, natural oils, gums, resins, medicines, firewood, craft wood, grazing and minerals.

In Australia, there are around 1126 hardwood mills and 259 softwood mills. The hardwood mills are generally small scale and scattered, and the softwood mills large and integrated with other processing facilities. There are also 22 pulp and paper mills, and 30 veneer and panel board mills.

Australia produces about 83 per cent of its sawn timber needs. It obtains 36 per cent mostly from native forests and 64 per cent from softwood plantations (AFFA 2002).

Governments intervene in forestry through:

- regulating the use of native forests and the development and harvesting of plantations; and
- operating enterprises in the business of managing forests and plantations.

Hence the CPA clauses most relevant to forestry are clause 5 (legislation review) and clause 3 (competitive neutrality).

Forestry is a complex area of competition policy implementation. The Council first began to consider forestry as a priority assessment matter in 2001. Since then it has endeavoured to isolate the key issues and to draw some conclusions about how it will assess implementation activity and outcomes. It has not been possible, however, for the 2002 NCP assessment to reach conclusions on compliance by each jurisdiction. The Council therefore intends to finalise its assessment of governments' compliance with CPA clauses 3 and 5 in 2003. This will also allow the Council to consult further with governments and interested parties on NCP issues relating to forestry.

## Legislation review

### Legislative restrictions on competition

State governments regulate the commercial use of public native forests and plantations principally through their forests Acts or similar. This legislation generally provides for certain forested Crown lands to be designated as State forests, for management and control of State forests by a government agency, for the preparation of forest management plans and for the licensing of certain uses of State forests by private parties.

The principal restrictions on competition found in this legislation relate to licensing. These are:

- eligibility restrictions – such as requirements that licence holders own a processing mill or not be foreign owned;
- tradeability and divisibility restrictions – such as requiring official approval before licences may be transferred or split;

- security restrictions – short licence terms or powers to alter allocation volumes, grades and pricing; and
- conduct conditions – conditions mandating certain logging practices.

Forest Acts usually leave State forest agencies considerable discretion over how they allocate and price logging licences. This discretion could allow restrictive licence allocation and pricing practices – for example, favourable treatment of incumbent timber processors relative to potential entrants – although, strictly speaking, the Acts themselves do not restrict competition. Nevertheless, there are important reasons for governments to have in place regulatory and/or structural arrangements that, where possible, promote open competition – most notably to:

- obtain adequate returns to the community from the use of a valuable public resource;
- give more certainty to the timber processing industry and to other forest owners about the government's future behaviour as a timber supplier; and
- allow ready public scrutiny of State forest administration.

Similar issues are raised by forest agreement Acts, such as Victoria's *Forestry (Woodpulp Agreement) Act 1996*. Legislation of this type ratifies agreements to provide long term rights to timber supply – 35 years in the case of this particular Act – usually on a take-or-pay basis. The potential restriction on competition is not the term of these rights – long term property rights are often consistent with promoting competition – but how such rights are allocated between potential holders. Again, though, allocation decisions of this kind are typically not governed by legislation, and therefore not directly subject to review under CPA clause 5 (although, for the reasons above, allocation decisions should where possible be made in an open and competitive manner). There are also the agreement Acts themselves but these usually only ratify agreements already reached.

Private native and plantation forestry is principally regulated by general landuse planning and environmental protection laws. These laws impose restrictions on how forestry operations are conducted and, in the extreme, may prohibit conversion of land to plantation forestry from another land use. Chapter 13 assesses the review and reform of these laws where relevant.

New South Wales and Tasmania specifically regulate plantation forestry through requiring plantations to be approved and through setting conduct standards intended to minimise environmental harm. These laws are discussed here.

The Commonwealth regulates the export of unprocessed wood via regulations made under the *Export Control Act 1982*. These regulations prohibit exports without an export licence unless the wood comes from a forest or plantation subject to a regional forest agreement between the Commonwealth and the relevant State.

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## Regulating in the public interest

As noted earlier, native forests provide a wide range of benefits to the community, from the conservation of biological diversity to recreational experiences, timber production and stock grazing. Governments intervene in native forest use principally because some of these benefits are difficult for holders of forests or forest rights to trade – it is too costly to exclude those who have not paid for a particular benefit from enjoying it. In addition, those forest benefits that are readily tradeable are, above a certain intensity of use, competitive with non-tradeable (ecological) benefits. Consequently, without government intervention, community welfare will tend to be reduced because forest rights holders have an incentive to produce too little of, for instance, biological diversity and aesthetic amenity, and too much of timber and grazing.

The key objective of native forest regulation is therefore to protect the adequate availability of non-tradeable forest values while maximising economic benefits to the community from the exploitation of tradeable forest values. Another important objective of governments is often to promote employment in forest-related industries in rural and regional areas.

Outside national parks and similar reserves, the least restrictive approach to meeting these objectives in public native forests is to define and allocate tradeable rights to delineated areas of forest. Such rights (or forest leases) would:

- oblige holders to:
  - protect specified non-tradeable forest values, including public access;
  - regularly obtain certification of fulfilment of these obligations by accredited independent certifiers;
- allow cancellation should holders persistently fail to meet these obligations;
- allow any use of the forest – not just timber production – subject to these obligations;
- be long term – possibly two cycles of harvesting and regeneration – to ensure right-holders have a stake in maintaining forest productivity; and
- be initially allocated either competitively, or to existing holders of timber licences, or a mix of both.

A return to the community could be recovered via resource rents set competitively or as a set proportion of attributable revenue.

Such forest leases would allow competition in all aspects of managing native forests. In particular, by allowing alternative uses to timber production, and

by being long term, such rights would foster more innovation in native forest management and utilisation.

There are, however, some potential problems in practically implementing such forest leases. First, skills and experience in productive management of native forests are likely to be in short supply outside the public sector, and hence there may be limited demand for such rights, at least in the short term. Second, in certain forest ecosystems there may be as yet insufficient understanding of ecological processes and hence the long term impact of certain forest uses, to decide whether reservation or production is the most appropriate long term use. Third, knowledge about the productive capacity of some forests may be poor, making it difficult for potential lease holders to select and value such rights. Fourth, given strong public concern about native forest management and use, potential holders may judge the risk of future policy change leading to the resumption of these leases to be too high.

These problems may all be overcome in time, at least for some public native forests, although at some cost.

In the meantime, and in situations not suited to such rights, governments must offer less complete rights to public native forest resources. In the case of timber these are licences to harvest specified areas or to take delivery of specified grades and volumes of logs. Such licences will generally be in the public interest where:

- there are few if any eligibility restrictions;
- they are initially allocated and priced competitively – preferably but not necessarily through public auctions or tenders;
- they are freely tradeable between eligible holders;
- of a sufficient term and security to justify downstream investment; and
- impose the minimum conditions on conduct necessary to protect other forest values.

These licences or rights need not be statutory instruments. Indeed, statutory instruments may present disadvantages, such as inflexibility, to State forest agencies constituted as corporatised public forest enterprises, and competing with other forest owners.

An important factor for governments in past timber allocations has been the objective of supporting employment in particular rural areas. The Council understands that governments have pursued this objective by excluding potential competitors from rights to certain forest resources and by concessionary pricing of such rights. It is likely that this has led to lower returns to the community from public forests and less efficient production in some parts of the timber processing industry than would otherwise be the case. These costs may in some circumstances be exceeded by the regional employment benefits, but generally there are alternative means of seeking

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such outcomes that do not involve restricting competition for rights to forest resources. These alternatives, such as conventional employment programs and structural adjustment assistance offered by the Commonwealth and the States as part of the regional forest agreement process, also have the advantages of avoiding the rewarding of inefficient production practices and of being more open to public scrutiny.

With plantation forestry the main concern is that establishment and harvesting of plantations may impose costs outside the boundary of the plantation, for example, harm to water quality and local roads. The aim of regulation here should be to require the plantation owner to take steps to minimise the harm (for example, to protect water quality through using settling ponds) or to compensate for harm done (for example, to contribute towards the maintenance of local roads). A sound regulatory regime will:

- impose minimum restrictions to effectively mitigate or remedy clearly identified harms; and
- be stable and predictable so that potential plantation investors can be certain what costs they face before investing.

## Review and reform activity

### Commonwealth

The Commonwealth has completed the review of various regulations under the Export Control Act affecting wood.<sup>14</sup> The review, principally by AFFA officials, was unable to find any significant benefit from the regulations – either in encouraging domestic processing or sustainable management of forests. It recommended that the Government remove export controls on:

- sandalwood;
- plantation-sourced wood, if plantation codes of practice in Queensland and the Northern Territory are found to meet National Plantation Principles; and
- hardwood chips, or allow the export of hardwood chips from non-regional forest agreement regions under licence.

The Government expects to respond to these recommendations during 2002.

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14 Export Control (Unprocessed Wood) Regulations, Export Control (Hardwood Wood Chips) Regulations 1996 and Export Control (Regional Forests Agreements) Regulations.

## New South Wales

New South Wales's *Forestry Act 1916* was not scheduled for review under the NCP. The Government has however completed a parallel review and reform program intended to improve the efficiency and sustainability of the forestry sector in New South Wales. This program resulted in the *Forestry and National Park Estate Act 1998* and *Plantations and Reafforestation Act 1999*. The Government considers this new legislation and the Forestry Act to be consistent with CPA principles.

## Victoria

Victoria completed an independent review of its *Forests Act 1958* in April 1998.<sup>15</sup> The review found the Act and its regulations themselves contain few restrictions, but that administration of the Act and regulations could give rise to restrictions. It recommended (among other things) that the Victorian Government:

- amend the Act to:
  - allow a purchaser-provider separation in State forest management; and
  - remove any requirement under the sustainable yield provisions for a minimum level of logging regardless of timber demand;
- enhance competitive neutrality by:
  - clearly separating the department's policy, regulatory and commercial forestry functions; and
  - assessing the costs and benefits of corporatisation of the commercial function;
- develop more transparent and market-based processes by:
  - reviewing the present system of administered log allocation and pricing; and
  - reforming minor forest product licence and permit practices.

In August 2000 the Government established its commercial native forestry business as Forestry Victoria. This is a distinct commercially-focused unit within the Department of Natural Resources and Environment.

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<sup>15</sup> Other Victorian forestry legislation includes the Forests (Wood Pulpwood Agreement) Act 1996, which ratifies a 34 year long agreement to supply pulpwood to AMCOR Limited, and the Forestry Rights Act 1996, which provides a voluntary framework for agreements between landowners and forest developers. These Acts do not in themselves restrict competition.

In early 2001 the Government commissioned independent consultants to review timber pricing. This review released a discussion paper in June 2001 evaluating a variety of approaches to pricing public native forest produce. A report is expected soon.

In February 2002 the Government announced that, following research on sustainable yields from public native forests, sawlog supply volumes would fall substantially. It also released a major policy statement, 'Our Forests, Our Future', which set out directions for further native forest management reform. These include:

- establishing a separate commercial enterprise, VicForests, to operate public native production forests and funded to provide identified community services;
- phase-in of market-based pricing and allocation of timber via a mix of short and long term supply arrangements.

A taskforce of industry and departmental members is advising the Government on implementation of these reform directions, including the preparation of a revised response to the NCP review, and the development of new forests legislation and new licensing processes.

#### Queensland

Queensland completed a departmental review of its principal forestry legislation, the *Forestry Act 1959*, in April 1999. The review recommended retention of the 'non-competitive' native forest sawlog allocation system (Queensland Government 2001). It found that the efficiency gains of reform to the system would be outweighed by significant social costs for several small rural communities. The Government accepted the recommendation and passed the Forestry Amendment Act 1999. This Act exempts the allocation system from the Commonwealth *Trade Practices Act 1974* until 2009. In January 2000 the Government removed a stumpage levy that funded the Timber Research and Development Advisory Council.

The Government expects to repeal the *Sawmills Licensing Act 1936* in September 2002 following the implementation of a new Forest Practices Management System.

#### Western Australia

Western Australia's principal forestry legislation is the *Conservation and Land Management Act 1984*. A review by an independent economic adviser recommended the repeal of various limits on beekeeping in State forests and the exemption of tree values from local body rating. The Government is implementing these changes in 2002 via an omnibus Bill.

The review also examined the then Conservation and Land Management Amendment Bill and the Forest Products Bill, both now enacted, and found the identified restrictions to be in the public interest. These Acts vested State forests and other lands in the Conservation Commission and established the Forest Products Commission to undertake commercial forestry functions on State forests and private land.

The *Sandalwood Act 1929*, which controls the harvesting of sandalwood on private and public land, has been reviewed. The review recommended removal of the cap on the amount of sandalwood which can be harvested from private land. The Government has decided to retain restrictions on harvesting sandalwood on public land in the public interest, however. The Act is to be amended accordingly this year via an omnibus Bill.

### South Australia

South Australia considers that its principal forestry legislation, the *Forestry Act 1950*, does not restrict competition.

The Government reviewed the *Sandalwood Act 1930* in 1999. The review recommended repeal of the Act and the South Australian Parliament is currently considering the Sandalwood Repeal Bill 2001.

Two new Acts passed in 2000 were the *South Australian Forestry Corporatisation Act 2000* and the *Forest Property Act 2000*. The former established ForestrySA as a public corporation. The latter provides a voluntary framework for separating ownership of land and trees. South Australia considers neither Act restricts competition.

### Tasmania

Tasmania reviewed its *Forestry Act 1920* in 1998. The Government is to remove all but one of the Act's restrictions on competition. The remaining restriction, relating to minimum supply requirements for eucalypt veneer logs and sawlogs to the veneer industry and sawmilling industries, was found to be in the public benefit during the regional forestry agreement process.

Tasmania also completed a review of the *Forest Practices Act 1985* in 1998. The review found all restrictions on competition contained therein to be in the public interest.

**Table 4.16:** Review and reform activity of legislation regulating forestry

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Commonwealth	Regulations under the Export Control Act related to wood	Licensing of unprocessed wood exporters Licensing of hardwood chip exporters Maximum aggregate mass limits for woodchip exports	Review principally by AFFA officials completed July 2001. It recommended removing controls over export of sandalwood and over the export of plantation-sourced wood and hardwood chips subject to certain conditions.	The Government expects to respond in 2002.	Council to finalise assessment in 2003.
New South Wales	<i>Forestry Act 1916</i>	Licensing of timber harvesting Licensing of sawmills Permits for grazing, hunting or occupying State forest	Not scheduled for NCP review but included in program of forest regulatory review.	Review led to new <i>Forestry and National Park Estate Act 1998</i> and <i>Plantations and Reafforestation Act 1999</i> .	Council to finalise assessment in 2003.
	<i>Threatened Species Conservation Act 1995</i>	Licensing of conduct that harms threatened species, populations or ecological communities	See Forestry Act (NSW).	See Forestry Act (NSW).	Council to finalise assessment in 2003.
Victoria	<i>Forests Act 1958</i>	15 year non-transferable timber harvesting licences Permits and leases for grazing and other uses of State forest Administrative discretion over how licences and produce are allocated and priced Logs harvested to equal sustainable yield	Reviewed by independent economic advisers in 1998. The review recommended: <ul style="list-style-type: none"> <li>• allowing purchaser/provider structure for management of State forests;</li> <li>• removing requirement for minimum level of logging;</li> <li>• developing market-based processes for log allocation and pricing; and</li> <li>• separating policy, regulatory and commercial forestry functions of the department.</li> </ul>	In February 2002 Victoria released a major policy statement. The Government intends to establish a new commercial entity VicForests and to make pricing and allocation of forest produce more competitive and transparent. An industry/department task force is advising on implementation.	Council to finalise assessment in 2003.

*(continued)*

Table 4.16 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Queensland	<i>Forestry Act 1959</i>	Licensing of timber collection and of taking of other resources  Administrative discretion over how licences and produce are allocated and priced  Logs harvested not to exceed sustainable yield  Levy to fund timber research	Reviewed by officials in 1999. The review recommended:  <ul style="list-style-type: none"> <li>• retaining the native forest sawlog allocation system as, while pro-competitive reform would bring economic gains, it avoided imposing significant social costs on several rural communities; and.</li> <li>• retaining the timber research levy.</li> </ul> A subsequent review of agricultural levies recommended removal of the timber research levy.	Act amended in November 1998 to extend exemption from the Trade Practices Act for the native forest sawlog allocation system until 2009.  Timber research levy removed in 2000.	Council to finalise assessment in 2003.
	<i>Sawmills Licencing Act 1936</i>	Licensing of sawmills at absolute discretion of corporation  Licences specify maximum productive capacity of mill	Reviewed in 2000.	Act to be repealed (without replacement legislation) in September 2002.	Council to finalise assessment in 2003.

*(continued)*

Table 4.16 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>Conservation and Land Management Act 1984</i>	Licensing of timber collection and of taking of other resources  Administrative discretion over how licences and produce are allocated and priced  Permits to occupy and use State forest  Registration of timber workers	A review by an independent economic adviser recommended the repeal of: <ul style="list-style-type: none"> <li>• various limits on beekeeping in State forests; and</li> <li>• the exemption of State forest tree values from local body rating.</li> </ul> Separately the Act was amended by: <ul style="list-style-type: none"> <li>• <i>Conservation and Land Management Amendment Act 2000</i>; and</li> <li>• <i>Forest Products Act 2000</i>.</li> </ul> These Acts vested State forests and other lands in the Conservation Commission and established the Forest Products Commission to undertake commercial forestry functions on State forests and private land.  A review of this amending legislation found all identified restrictions to be in the public interest.	The recommendations of the review of the unamended Act will be implemented in 2002 via an omnibus Bill.	Council to finalise assessment in 2003.
	<i>Sandalwood Act 1929</i>	Caps the quantity of naturally-occurring sandalwood harvested from Crown and private land  Licensing the harvesting of sandalwood  Individual licences capped at 10 per cent of the total limit	Review completed. It recommended retaining the overall cap on the quantity sandalwood harvested while removing the restriction on the proportion of the annual sandalwood harvest that may be taken from private land.	Recommendations to be implemented in 2002 via an omnibus Bill.	Council to finalise assessment in 2003.

*(continued)*

Table 4.16 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>Forestry Act 1950</i>	Exclusive control and management of State forests by Forestry SA  Licensing of timber collection and taking of other resources  Administrative discretion over how licences and produce are allocated and priced	Not scheduled for review as Act is not considered to restrict competition.		Council to finalise assessment in 2003.
	<i>Sandalwood Act 1930</i>	Caps the quantity of naturally-occurring sandalwood harvested from Crown and private land  Licensing the harvesting of sandalwood	Reviewed in 1999. The review recommended repeal of the Act.	A Bill repealing the Act has been introduced into the South Australian Parliament.	Council to finalise assessment in 2003.

*(continued)*

Table 4.16 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Tasmania	<i>Forestry Act 1920</i>	<p>Exclusive control and management of State forests by the Forestry Corporation</p> <p>Licensing of timber collection and of taking of other resources</p> <p>Administrative discretion over how licences and produce are allocated and priced</p> <p>Minimum supply of logs for veneer and sawmilling industries</p> <p>Wood supply agreements to contain certain conditions</p> <p>Permits to occupy and use State forest</p> <p>Registration of timber workers</p>	<p>Reviewed by an external consultant in 1998. It noted that minimum supply restrictions are anti-competitive and recommended:</p> <ul style="list-style-type: none"> <li>• simplifying the Act; and</li> <li>• removing certain conditions of wood supply agreements.</li> </ul> <p>The minimum supply restrictions were found to be of public benefit during the process to establish a Regional Forest Agreement.</p>		Council to finalise assessment in 2003.
	<i>Forest Practices Act 1985</i>	<p>Requires preparation and certification of forest practices plan before timber harvesting can start</p> <p>Declaration of private timber forests</p> <p>Prescribes forest practices under Forest Practices Code</p> <p>Operators harvesting more than 100 000 tonnes per annum must submit a 3 year plan for approval by Forest Practices Board</p>	<p>Reviewed in 1998 by Forest Practices Advisory Council. The review recommended no changes to the Act.</p>		Council to finalise assessment in 2003.

## Competitive neutrality

All States and the ACT have publicly owned agencies which are recognised as undertaking significant forest-related business activities, most importantly the sale of logging rights and/or logs, in competition (current or potential) with private forest owners. State governments are therefore obliged under CPA clause 3, to the extent that the benefits outweigh the costs, to either corporatise their forestry business activities or to adopt cost-reflective pricing of forestry goods and services.

The key elements in corporatising a significant business activity (drawn from CPA clause 3 and the corporatisation model prepared by the Taskforce on Other Issues in the Reform of Government Trading Enterprises in April 1991) are:

- setting a clear value-maximisation objective for the enterprise and directly funding any non-commercial community services;
- separating policy advisory and regulatory functions from commercial functions;
- setting the enterprise's core business, valuation, target rate of return, capital structure and dividend policy;
- imposing on the enterprise:
  - Commonwealth and State/Territory taxes or tax equivalent systems;
  - debt guarantee fees; and
  - those regulations to which private enterprises are normally subject;
- delegating to the enterprise's board and management full authority over pricing, operational, employment, investment and financing decisions; and
- regular reporting and monitoring of the commercial performance of the enterprise.

Cost-reflective pricing involves pricing goods and services to cover their full costs of production including, where appropriate, taxes or tax equivalents, the opportunity cost of capital employed in producing the goods and services, and costs arising from complying with regulations that similar private businesses are subject to. Full cost attribution can accommodate a range of costing methodologies, including fully distributed cost, marginal cost, avoidable cost, as appropriate to particular cases. See chapter 2 for further discussion of the general principles and application of competitive neutrality.

Whichever approach governments adopt, forest agencies must charge prices for timber that, over the longer term, generate revenues that at least cover

the costs of managing their forests for timber supply and provide a commercial return on the assets employed in timber production.

There have been longstanding concerns that timber supplied by forest agencies is sometimes underpriced. Underpricing timber imposes various costs on the community, including:

- supporting exploitation of native forests at higher than economic levels;
- slowing productivity growth in the timber processing industry; and
- hampering the development of private plantations (and hence related benefits such as the contribution that private plantations make to controlling salinity in certain dryland farming areas and to sequestering carbon).

In May 2001 the Commonwealth Competitive Neutrality Complaints Office (CCNCO) released the research paper 'Competitive Neutrality in Forestry' which extensively discussed the implications of competitive neutrality for state forest agencies. The CCNCO noted some difficulties in monitoring the financial performance of forest agencies and the adequacy of timber prices.

*Over the 'life' of a forest, the rate of return provides a useful measure of an agency's financial performance. However, annual rates of return need to be interpreted with care. For example:*

- *revenues, and hence rates of return, will fluctuate from year to year because the quantity of wood available for harvest will vary, unless the forest age profile is consistent through time;*
- *with a pronounced cyclical demand for many processed wood products, log prices (and hence forestry returns) can also be quite volatile; and*
- *the use of expected future returns to determine the value of forestry assets introduces an element of circularity into an agency's reported rate of return. More specifically, it means that poor performance by an agency will lower the value of its forestry assets. As a result, the reported decline in returns, relative to the new asset base, is dampened, or perhaps even eliminated.*

*This 'circularity', coupled with the sensitivity of rate of return measures to factors unrelated to the performance of the forestry agency (eg changes in market conditions), suggests that, for performance monitoring purposes, annual rates of return need to be assessed in the context of longer term trends and other relevant information. This should include details of, and reasons for, changes in asset values and longer term projections of the pattern of future log sales.*

*The CN requirement that forestry agencies recover all costs and generate commercially acceptable returns should help address past*

*concerns about underpricing of logs by forestry agencies. However, in view of the difficulties in assessing and interpreting rates of return and related information, it may often be difficult to judge whether logs are being sold at their 'full' market value. In these circumstances, a useful way of assessing the market value of logs is to compare log prices with their residual value — a value derived by subtracting harvesting, transport and processing costs from the prevailing international prices of processed wood products.*

*Underpricing by forestry agencies of logs from native forests has hampered the development of private wood growing enterprises. However, with the reforms of the last decade or so, and with harvesting controls limiting the output of most forestry agencies, other factors — such as the future competitiveness of Australia's wood processing sector — may be more important for the future development of private wood supplies. (CCNCO 2001, p. x)*

The key conclusion of the research paper is that monitoring of public forest enterprise financial performance — and thus the assessment of competitive neutrality compliance — may be assisted by determining the market value of logs (for use in valuing the timber asset) using the residual value method.

This does not mean that the 'residual value' method is most appropriate for setting actual timber prices. A report recently prepared for the Australian Conservation Foundation (Marsden Jacob Associates 2001) argued that forest agencies that set timber prices in this way effectively subsidise the processing industry by making 'ability to pay' the main pricing criterion. According to the report, this results in the exploitation of native forest that is uneconomic to log, and in inefficiency in the processing industry. The report recommended that forest agencies sell timber via auctions or tenders subject to a cost-based reserve price.

The sale of timber via auction or tender was also discussed in a paper recently released by the Victorian Government's Timber Pricing Review (Jaakko Poyry Consulting 2001). The discussion paper also noted, however, that in areas where insufficient competition exists between processors, other approaches (such as the residual value method) may give a better indication of overall market values.

An obvious further difficulty with the residual value method is that, like price regulation generally, it relies on the revelation of cost information to governments by government agencies and private processors which have strong incentives to bias the information in their favour.

For this and other reasons noted by the CCNCO, reported rates of return are likely to be insufficient to effectively monitor State forest enterprises and hold directors and management to account for the enterprise's performance. Governments are likely to find it necessary to also monitor the pricing policies and practices of these enterprises.

This though presents another difficulty. Under the corporatisation model boards and management have autonomy from shareholding Ministers and departmental officials in making pricing decisions. Moving the focus of ownership monitoring to product pricing may invite undue influence by Ministers and officials in enterprise pricing decisions. Such influence was arguably a significant factor in past instances of underpricing.

The best solution to this dilemma may be for governments to negotiate with State forest enterprise boards a performance monitoring regime that includes pricing transparency mechanisms. Possible such mechanisms include:

- posted prices and pricing formulas for all sales – so that processors, competing timber suppliers and the community at large are able to scrutinise the enterprise’s pricing performance and detect any instances of ‘weak selling’ or discrimination;
- periodic reviews of the enterprise’s pricing policies and practices by an independent expert and reporting of review results in the enterprises’ annual report; and
- gazettal or similar reporting of any directions from shareholding Ministers to the enterprise’s board related to pricing.

The design of suitable transparency mechanisms would need to address confidentiality concerns – particularly where existing contracts or licences carry (legitimate) confidentiality obligations.

The CCNCO noted that currently there is very little published information on prices realised by forest agencies (CCNCO 2001 p. 43).

Forest agencies may argue that these types of transparency mechanisms are not imposed on their privately-owned counterparts and may disadvantage the public enterprises competitively. The appropriate response to this argument is that it makes up for the deficiency in management accountability that is unavoidable where ownership rights are not publicly traded, as is the case for public forest enterprises.

In assessing in 2003 the application by governments of CPA clause 3 to their forest enterprises the Council will focus on the effectiveness their performance monitoring arrangements – particularly the extent to which the problems noted above have been acknowledged and addressed – and related elements of competitive neutrality such as the identification, costing and funding of community service obligations.