



NEW SOUTH WALES GOVERNMENT

Report to the National Competition Council on the Application of National Competition Policy in New South Wales

April 2004

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1. Introduction

1.1 Overview

New South Wales has demonstrated a strong and continuing commitment to the National Competition Policy reform program since its commencement in 1995.

These reforms include the establishment of the National Energy Market and major structural changes to the regulation and management of government businesses. New South Wales took all actions necessary to introduce the national electricity market and was the first State to introduce full retail contestability in the supply of both electricity and gas to the household level. The NSW Government has been, and continues to be, a leading State in energy market reform.

Public monopolies have been systematically reformed to separate responsibility for industry regulation from commercial functions. All major businesses with monopoly characteristics are subject to independent price oversight by the Independent Pricing and Regulatory Tribunal. All NSW government businesses operate within a comprehensive commercial policy framework.

New South Wales has completed all road transport reforms to help establish consistent road transport regulation across Australia.

New South Wales has also made substantial progress in fulfilling its obligations under the 1994 COAG Strategic Water Reform Framework. New South Wales is joining with the other States and Territories and the Commonwealth to achieve further historic reforms in water.

New South Wales continues to meet its obligations under the Conduct Code Agreement.

The final main structural reform obligation under National Competition Policy is legislation review and reform, which is the main focus of this report. New South Wales has made substantial progress in completing its review and reform activity. In summary, of the 52 areas identified as outstanding by the National Competition Council:

- 22 outstanding reviews have now been completed;
- 13 reviews will be completed following the passage of legislative amendments to enable implementation of reforms (anticipated to be in the current session of Parliament);
- 7 reviews are incomplete due to national/ inter-jurisdictional processes outside of New South Wales' direct control;
- 8 reviews are incomplete. This group includes the further reviews of poultry and rice legislation that the NSW Government has agreed to undertake, with the approval of the NCC, and reviews for which reforms are anticipated to be completed between July 2004 and December 2004.

The New South Wales Government remains committed to completing review and, where appropriate, reform activity in the few remaining incomplete areas. The Government has also established a regulatory environment that promotes the systematic and transparent assessment of the costs and benefits of all proposed government regulations.

New South Wales' achievements through National Competition Policy have been significant and comprehensive. In view of New South Wales' commitment to national competition policy and its considerable achievements since 1995, the remaining few incomplete matters at the time of reporting are considered of minor importance for the 2004 assessment.

1.2 2004 NCP Assessment

This report to the National Competition Council (NCC) is submitted in accordance with the NSW Government's reporting obligations in the National Competition Policy Agreements.

The report outlines the Government's progress in implementing NCP obligations for the period 1 April 2003 to 31 March 2004 in the areas identified by the NCC as requiring report for the 2004 assessment. The report also forecasts legislation review and reform activity to 30 June 2004.

A separate report has been prepared on the implementation of water reform obligations.

This report should be read in conjunction with the Government's previous Annual Reports to the NCC. Inquiries about this report may be directed to the Inter-Governmental and Regulatory Reform Branch, The Cabinet Office, telephone (02) 9228 5414.

1.3 Structure of this Report

This report contains separate chapters that address the remaining compliance areas identified by the NCC. These compliance areas are:

- Priority legislation review and reform (Chapters 2-10);
- Non-priority legislation review and reform (Chapter 11);
- Competitive neutrality (Chapter 12);
- New legislation and gatekeeping (Chapter 13) and
- Energy (Chapter 14).

PRIORITY LEGISLATION REVIEW AND REFORM

2. Retail trading Arrangements (Liquor Licensing)

The sale and supply of alcohol in New South Wales is regulated by the *Liquor Act 1982* and *Registered Clubs Act 1976*. An NCP review of liquor laws has been completed and provided to the NCC.

The liquor laws control alcohol sales and licensed venues. Minimising harm associated with the misuse and abuse of liquor is a primary object of those laws.

The NSW Government reported in 2003 that it would delay consideration of the NCP review until the completion of the NSW Summit on Alcohol Abuse, held during 26 – 29 August 2003. The objective of the Summit was to investigate the causes, nature and extent of the problem of alcohol abuse, and to recommend the best and most cost effective strategies to address this problem.

The Alcohol Summit has provided invaluable insight into current approaches to dealing with the problem of alcohol abuse in the community, the estimated cost of which to Australia in 1998-99 was \$7.6 billion. This includes the costs associated with health and medical services, road accidents, alcohol-related crime and lost workplace productivity. The Summit recommended a comprehensive set of measures to prevent and reduce alcohol-related harm. An important message from the Summit was that a robust liquor regulatory regime is essential for maintaining the responsible supply and consumption of alcohol.

The NCP review

The NCP review identified two general categories of “restrictions”. The first relates to restrictions that reflect the community’s social standards, which include a prohibition on the sale of liquor to minors and requirements for the responsible service and sale of alcohol. The review found that such restrictions provide overwhelming net benefits through the minimisation of harm associated with alcohol.

The second category relates to restrictions on entry into the market for the sale of liquor and the conduct of sellers, which arise out of the licensing system. The key restrictions in this system are:

- the requirement to hold a licence to sell liquor. The conditions for obtaining a licence require that applicants must be fit and proper persons and have an adequate knowledge of liquor laws. People who hold liquor licences must comply with conditions relating to the type of licence they hold, such as the types of activities that may be carried on in the licensed premises;
- the “needs” and “public benefit” tests applying to the granting of a new licence. The “needs” test allows people who would be affected by a retail or hotel licence application the opportunity to make objections on the grounds that the needs of the public are met by existing facilities. The “public benefit” test, which applies to nightclub applications, is aimed at allowing community interests to be considered when a new venue is proposed;

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- the cost of the licence application process and licence fees, the latter being determined on a case-by-case basis taking into account factors such as the size, location and nature of the business;
 - restrictions on the sale of liquor by certain types of businesses, including mixed small businesses, convenience stores and petrol stations, which apply unless the licensing authority is satisfied that no other take-away liquor service is reasonably available in the neighbourhood and the licence would not encourage drink-driving or other liquor-related harm; and
 - restrictions on trading hours, which are aimed at promoting the minimisation of alcohol-related harm and the protection of amenity.

With the exception of the “needs test” (discussed below), the NCP review found the licensing system as a whole to provide a net public benefit. The review, however, recommended that a number of improvements be made to simplify and streamline administrative and compliance requirements, including reducing the number of licence categories, making licence conditions more flexible, and moving the licence application process to a more administrative approach.

The NCP review found that the “needs test” may be used by existing or potential business operators to protect their market shares and that the hearing of objections during the application process creates significant legal costs for applicants and objectors. It recommended that the “needs test” be phased out and replaced with provisions which focus on harm minimisation and community amenity and do not allow consideration of the economic impact of applications on existing businesses.

Reform

On 17 February 2004, the NSW Government introduced legislative amendments to address the main areas of incomplete or non-compliant reform identified as of concern by the NCC. Schedule 1 of the National Competition Policy Amendments (Commonwealth Financial Penalties) Bill 2004 (“the Bill”) contains amendments to address the Council’s specific concerns in the area of liquor regulation, namely the “needs test” and licence fees. The proposed amendments reform the key restrictions identified by the NCP review.

Under the Bill, the *Liquor Act 1982* would be amended to:

- remove the “needs test”. The Bill instead provides for a social impact assessment (SIA) process to apply in relation to the granting of a new licence or removal of a licence;
- provide that fees for licences will be set by regulation instead of by the Liquor Administration Board; and
- provide that service stations may not be granted a licence in any circumstances and to extend the restriction on granting a retail off-licence to a convenience store to other similar stores such as mixed businesses, corner shops and milk bars.

Social Impact Assessment

The SIA process in the Bill is significantly different to the “needs test” process. The Bill provides that before a licence is granted, an SIA must be approved by the Liquor Administration Board (“the Board”), an independent body consisting of four magistrates. The Board may approve an SIA if it is satisfied that it complies with the Act and regulations and the overall social impact of the application will not be detrimental to the local community or broader community.

The specific matters to be addressed or information to be provided by an SIA will be contained in regulations. The regulations will provide for a two-tiered SIA process so that assessment requirements are tailored to reflect the degree to which licence applications are likely to be associated with social detriment. A “full” SIA will be required in respect of a new licence application or a licence that is re-located to another area. A more streamlined or “standard” SIA will be required for the relocation of a licence within close proximity to its existing location (that is, within the same community), which is less likely to result in additional harm to the local community.

Both SIA processes will be premised on a requirement that applicants demonstrate there will be no increased harm to the local or broader community from the proposed licence. In relation to the “standard” SIA, the main issue that applicants will need to address is whether the new location for the liquor outlet is closer to sensitive facilities such as schools, places of worship or areas where young people congregate.

For “full” SIAs, applicants will be required to provide information that describes the nature of the community in which the applicant seeks to hold a licence and the potential impact on that community of an increase in the availability of alcohol. The type of information to be contained in an SIA would include, for example: identification of the local community; the demographic profile of the local community; responsible service of alcohol measures to be adopted by the applicant; impact on local amenity and the general trend in alcohol-related crime rates in the local community. Applicants may also describe the potential for increased social benefits from a new licence, such as that which may arise from community use of venue facilities and sponsorship of community projects.

Factors the Board must take into account when assessing an SIA will be contained in guidelines issued to the Board by the Minister for Gaming and Racing. Examples of factors include the cumulative impact of multiple licences in a single area and the demographic profile of an area. The guidelines will make it clear that the Board is only to take such factors into account to the extent that they are relevant to the minimisation of social harm, and that it must not consider them in relation to any impact on individual competitors.

The SIA process removes the potential for licence applications to be determined on the basis of the market impact of a new licence or with regard to the impact of competition on individual competitors. Instead, it requires independent licensing authorities to consider the social or community impact of granting a licence, consistent with the primary objective of harm minimisation under the *Liquor Act*.

The removal of the “needs test” will remove one of the major grounds for objection to a new licence and therefore significantly reduce the costs associated with the licence application process.

Liquor licence fees

The Bill provides that a fee on grant of a hotelier's licence or retail off-licence and annual renewal fees will be determined in accordance with the regulations. Under the regulations, the level of licence fees will be set to recover the costs of administration, which will substantially lower costs and eliminate any investment component and associated barriers to entry.

Service stations and convenience stores

The amendments relating to service stations and convenience stores support the new regulatory environment. The prohibition on the sale of liquor by service stations is strongly supported by evidence put to the Alcohol Summit, including that one third of all driver and pedestrian deaths are alcohol-related. The Government believes that there is a strong public interest in disassociating liquor availability from driving activity and therefore minimising, to the extent possible, the risks associated with drink driving. The amendment to the definition of general stores is consistent with, and clarifies, the current objectives of the Act.

Other competition restrictions

The proposed amendments in the Bill also reform other competition restrictions identified by the NCP review:

- restrictions on applications for another licence where a retail licence has previously been refused will be replaced with new provisions that assess applications on public interest grounds; and
- the introduction of an annual licence renewal process will substantially reduce the up-front costs associated with licences and establish a means of regular contact between the licensing authority and licence holders at minimal additional cost to the industry. The review recommended this reform to enable the gathering of better information by authorities for enforcement and administration of the Act. It will also assist in maintaining licence standards.

The principal competition restrictions identified for reform by the NCP review and the NCC are addressed by the Bill. The NSW Government intends to commence the amendments to the *Liquor Act* on or before 1 July 2004, as provided by clause 2(2) of the Bill.

The remaining review recommendations relate to streamlining and simplifying the existing licensing regime, as well as the enhancement of harm minimisation and enforcement measures. These recommendations are made in the context of a broader objective to introduce a new Act for the regulation of liquor sales, which the NSW Government strongly believes must be considered in the context of the Alcohol Summit's outcomes.

The Alcohol Summit put forward comprehensive recommendations for reform that recognise the complexity of problems and causes of alcohol abuse and the need for multi-faceted solutions connected with supply and demand strategies. The Summit's recommendations for regulatory reform incorporate such factors as the sale of and access to liquor; intoxication prevention; law enforcement; principles for the criminal justice system relating to recognising the causes of alcohol-related behaviour, offending and preventing alcohol-related crime; meeting the particular concerns of communities (especially Aboriginal communities) regarding the impact of alcohol harm on their communities and the establishment of safe environments for the management of liquor and its related effects.

These issues are integrally related to the re-shaping of liquor licence categories and conditions, as well as improvements to system administration. The implementation of improvements to the efficiency of the licensing system will be informed by the Summit's recommendations and research on the aforementioned matters. The Government intends to release a comprehensive plan of action in response to the Summit shortly.

3. Agriculture

3.1 Poultry

In its 2003 assessment the NCC assessed the *Poultry Meat Industry Act 1996* (“the Act”) as restricting competition between processors and growers by setting base rates for growing fees centrally and by prohibiting agreements unless approved by an industry committee. For the 2004 assessment, the NCC has sought advice on further action undertaken by the Government to meet its Competition Principles Agreement (CPA) obligations in respect of the Act.

Schedule 2 to the National Competition Policy Amendments (Commonwealth Financial Penalties) Bill 2004 (“the Bill”) introduced into the NSW Parliament on 17 February 2004 contains amendments to address the Council’s concerns relating to the Act. Following recent discussions with the NCC, the NSW Government will withdraw the proposed amendments to the Act. Instead, the Government has commissioned an independent NCP review of the Act, which is expected to be completed later this year. The terms of reference for the review have previously been forwarded to the Council.

The NSW Government notes the NCC’s advice that if the Government pursues this course of action, the NCC will recommend the application of a suspension penalty to competition payments in 2004-05 and the lifting of the suspension upon the timely implementation of any necessary reforms*.

3.2 Grains

The Government removed restrictions on the marketing of all commodities other than domestic sales of malting barley and export sales of all barley, canola and grain sorghum in 2001. The Grains Board will retain temporary vesting powers over these grains and oilseeds until a legislated sunset date of 30 September 2005. The Board will then be wound up and dissolved.

As previously advised to the NCC, New South Wales provided for a staged rather than immediate removal of restrictions on the marketing of grains following the financial collapse of the Grains Board in 2000 and to ensure that grain growers received monies owed. These arrangements are subject to a Court-ordered Scheme of Arrangement.

The NCC has confirmed that it does not consider that the NSW Government is in a position to bring forward the expiry date for the remaining vesting arrangements*. The Council will, accordingly, recommend that a competition penalty not be imposed in respect of the review of the *Grain Marketing Act 1991* for the 2004 assessment.

3.3 Agricultural and Veterinary Chemicals and Stock Medicines

The *Agricultural & Veterinary Chemicals (New South Wales) Act 1994* (“the Act”) applies laws of the Commonwealth relating to the registration and use of agricultural and veterinary chemicals as laws of New South Wales. The competition policy review of this Act was carried out as a national review and outstanding NCP issues are being addressed on a national basis rather than by

* Letter dated 16 March 2004 from the President of the National Competition Council to the Minister for Agriculture and Fisheries

any jurisdiction individually in accordance with the strategy for review and reform agreed by governments in 2000.

New South Wales is fulfilling its obligations as a party to this national approach. The review of the registration scheme is not yet complete, with a number of the issues at the national level being examined by working groups. Individual jurisdictions, including New South Wales, are not in a position to progress reforms to their own agricultural and veterinary chemicals legislation until outstanding national processes are resolved.

Nonetheless, the NSW Government has agreed to amend provisions relating to the 'control of use' of veterinary chemicals in the *Stock Medicines Act 1989* to address issues that were raised in the national review. These include:

- refining controls over the supply and use of stock medicine by veterinary surgeons, and strengthening requirements to follow label instructions;
- allowing producers to use stock medicines registered for use on any major food-producing animal on any minor food animals; and
- requiring vets to keep records of treatments involving stock medicines, and making vets liable for excessive residue levels due to treatments by them.

The Government will also repeal advertising restrictions in the *Stock Medicines Act*, which represent the only significant competition restriction remaining in the Act. The Government anticipates introducing legislation to make these changes in the current session of Parliament.

3.4 Rice

On 8 December 2003, the Commonwealth advised New South Wales of its decision that it would not pursue further the establishment of a single Australian rice export desk. The Commonwealth has been exploring this question since 1999.

In light of the Commonwealth's decision and consistent with the NSW Government's previous comments in relation to this matter, New South Wales will undertake a further NCP review of rice marketing arrangements. This review is expected to conclude later this year and will be undertaken by an independent person.

3.5 Fisheries

An NCP review of the *Fisheries Management Act 1994* ("the Act") by the Centre for International Economics (CIE) was completed in 2001. The review found that the Act provided overall net benefits to the community and that alternative (including non-legislative) approaches to sustainable fisheries management to those contained in the Act would be unlikely to work as well.

This review highlighted two issues requiring further consideration, namely: 1) justification of the fish receiver program and the recovery of its associated management costs and 2) clarification of the nature and extent of the social benefits and costs associated with restrictions placed on the charter boat fishing industry. This review formed the basis of the NCC's 2003 assessment of the Act.

The NCC has requested advice on the review and reform of the two outstanding issues. The Government commissioned the CIE to assess the matters against competition principles. CIE's key findings are outlined below:

Fish receiver registration fees

Fish receiver fees apply to persons or businesses who buy fish from a commercial fisher, or commercial fishers who directly sell their fish to the public. The Fish Receiver Program (FRP) has the objective of aiding the conservation of fish stocks by providing an auditable link between fish catches and point of first sale and minimising the marketing of illegally caught fish. It also ensures quality standards are met.

CIE found that the FRP is an integral part of the overall monitoring, surveillance and compliance system necessary to effectively manage the fish resources of New South Wales and to achieve the objectives of the Act. The review found that there was a sound basis for such a program and that similar programs operate in other jurisdictions where there are output quota restrictions or share management fisheries. By latter 2004, all major commercial fisheries in New South Wales will be share management fisheries.

Fees for fish receiver licences are set on the basis of cost recovery, with about 75 percent of costs currently recovered. CIE found that the fee structure for the FRP, which largely reflects the costs associated with necessary annual inspections of premises, is reasonable and justified.

On cost recovery frameworks more generally, the assessment noted that NSW Fisheries is implementing cost recovery as a component of ecologically sustainable development for both the commercial fishing and aquaculture industries and that cost recovery policies for both sectors will be progressively implemented from December 2004.

Charter fishing

There are two restrictions on charter fishing: a cap on the number of recreational charter fishing boats and limits on the transfer of licences by part-time fishing operators to full-time operators. The objective of these restrictions is to control the fishing effort of the commercial charter boat sector consistent with the objectives of the Act 'to conserve fish stocks and key fish habitats'.

CIE found that a limit on the number of boats is the most appropriate means of controlling overall fishing effort from the charter boat sector. Other restrictions such as more restrictive bag limits or restraints on fishers are limited to achieving targeted outcomes, and would be largely ineffective because of difficulties in ensuring compliance. CIE found that the method of limiting boat numbers is consistent with many grandfathering methods employed in other fisheries and other industries.

The small number of non-transferable licences was introduced as a transitional measure to cater for part-time operators who would not otherwise qualify for a full transferable licence. If the non-transferable licences were to be made transferable, it would potentially increase fishing effort on a permanent basis. CIE found that the sun-setting of non-transferable licences is a reasonable way of catering for those who have had a history of part-time operations but who would not otherwise qualify for a full transferable licence.

Overall, the CIE review found that the benefits of the fish receiver program and limits placed on charter fishing outweigh the costs, and that they are integral to achieving the overall objective of sustaining fish stocks. The Minister has accepted the findings of the CIE report, which concludes review and reform activity in respect of the Act.

3.6 Food Act

The NCC has requested advice on whether Parliament required any changes to the Food Bill 2003, which was assented to on 8 September 2003. The Food Bill was passed by the NSW Parliament without amendment.

3.7 Farm Debt Mediation

The *Farm Debt Mediation Act 1994* (“the Act”) prohibits lenders from taking enforcement action in relation to a farm mortgage without first giving the farmer an opportunity to seek mediation. In its 2003 assessment, the NCC assessed New South Wales’ review and reform activity in respect of this Act as not compliant with CPA obligations.

The NCC has since clarified that its concerns relate specifically to two amendments to the Act that were made in 2002, namely the introduction of a provision that prohibits lenders from taking enforcement action for twelve months if the Rural Assistance Authority is not satisfied that the lender has attempted to mediate in good faith, and a provision providing a right for parties to seek a review of decisions by the Authority.

Schedule 7 of the National Competition Policy Amendments (Commonwealth Financial Penalties) Bill 2004, currently in the NSW Parliament, proposes to remove the above provisions. The NCC has confirmed that the proposed reforms, when enacted, will meet NSW’s CPA obligations with respect to the Act*.

3.8 Mines Inspection Act

The NCC has requested advice on whether the *Mines Inspection Act 1901* (“the Act”) has been repealed. The Mine Health and Safety Bill (“the Bill”) will repeal and replace the Act. The Bill is part of a package of occupational health and safety reforms in the mining industry and relates specifically to safety in metalliferous mines and quarries. It is anticipated that the Bill will be introduced in the current session of Parliament.

3.9 Veterinary Surgeons

The *Veterinary Surgeons Act 1986* (“the Act”) regulates the licensing of veterinary surgeons and the practise of veterinary surgery in New South Wales. The NCP review of the Act determined that the regulation of veterinary practice through a system of registration is in the public interest as it ensures that only trained persons are able to undertake surgical and other high-risk health care procedures on animals and consumers are well informed as to the competencies required of animal health service providers.

The review recommended that reforms be made to the Act to maximise the net public benefits arising from the regulation of veterinary practice. The Government introduced the Veterinary Practice Bill 2003 in October 2003 to implement these reforms. The Bill was passed by Parliament on 2 December 2003 and assented to on 5 December 2003.

* ¹ Letter dated 16 March 2004 from the President of the National Competition Council to the Minister for Agriculture and Fisheries

Key reforms in the new *Veterinary Practice Act 2003* include:

- changing the licensing pre-requisites for a veterinary practitioner so that the “fit and proper person” test is supplemented with specific criteria objectively based on a person’s continued ability to practise veterinary medicine, such as the absence of prior offences under a law that imposes a requirement on a vet in his or her capacity as a practitioner. This will ensure fairness in the outcome of licence applications;
- the replacement of the previous monopoly held by the veterinary profession over all acts of veterinary science with a specific list of veterinary practices that, on animal welfare, human health and domestic and international trade grounds need to be restricted to licensed practitioners. This arrangement will enable a wider range of animal health care services to be provided, on a competitive basis, by both vets and non-vet service providers;
- the removal of prescriptive standards for vet hospitals and allowing flexibility for practices that wish to provide a small number of specialty services by providing that the licensing of premises will apply only to veterinary hospitals where major surgery (that which should not be undertaken without administering an anaesthetic other than a local anaesthetic, which entails the highest risks) is undertaken;
- the easing of restrictions on vet practice ownership to allow non-veterinary business associations and repeal of controls on advertising by veterinary practitioners;
- the introduction of provisions to make it easier for overseas graduates to practice in New South Wales;
- greater transparency with respect to disciplinary proceedings against licensed veterinary surgeons; and
- the introduction of two non-veterinary members to the Veterinary Practitioners Board (to bring the Board to a total of eight) to ensure that community expectations in animal welfare are considered in all deliberations of the Board and the Board is not dominated by professional interests. The quorum for a meeting of the Board at which a decision is made requires that at least one non-veterinary member be present.

4. Transport

4.1 Taxis

The NCC is concerned that the number of taxi licences is limited through the *Passenger Transport Act 1990* (“the Act”). The NCC is also concerned that the NSW Government has not responded to the Independent Pricing and Regulatory Tribunal’s (IPART) recommendations to increase the number of taxi licences by five percent per year. In its 2003 assessment the NCC observed that taxi licence plates were trading at around \$250,000 in mid-2002, and suggested that this represented a shortage in the number of licences available.

The Act does not impose a restriction on the number of taxi licences. On further review, it appears that the original NCP assessment of the Act in 1999 incorrectly assumed that the then Department of Transport had established a discretionary cap over licence numbers through its power to issue licences. However, permanent taxi licences can be acquired from either the existing pool of plates or on demand from the (now) Ministry of Transport at the prevailing market price. There is no legislative or administratively-based limit on the number of licences that may be issued.

The main restrictions in the Act relate to licence conditions. These conditions are primarily aimed at ensuring safety and quality in the provision of taxi services. The Government is satisfied that the licensing system does not create an unreasonable barrier to entry into the market and that the regulation of safety and customer service standards through licence conditions is justified in the public interest. The regulation and operation of the market for taxis is discussed further below.

Taxi fares are also regulated, however, fares are set at arm’s length from government through IPART.

Obtaining a taxi licence in New South Wales

Prior to the introduction of the Act in 1990, there were strict controls over the issue of new taxi licences. These restrictions were removed following the introduction of the *Passenger Transport Act 1990*. Since that time, there has been no restriction on the number of licences that may be issued. The purchase and sale of taxi licences is primarily governed by market conditions.

The focus of regulation for the taxi industry is the conduct of taxi operators, drivers and taxi-cab networks upon the grant of a licence.

The licensing system requires that operators of taxis must meet criteria to be accredited for the purpose of providing taxi services, and comply with conditions when carrying on taxi services. Accreditation criteria include “fit and proper person” tests, which are based on probity checks for specific offences; competency and viability; and access to maintenance facilities for taxi-cabs. An accredited taxi-cab operator must be able to meet requirements to ensure the safety and comfort of passengers, including maintaining the safety of drivers, passengers and the public; ensuring that their vehicles are road-worthy, clean and secure; and vehicles are appropriately fitted with prescribed devices, such as tracking and security devices.

Drivers of taxis must hold a driver's licence and demonstrate competency by passing a training course, as well as uphold cleanliness and safety standards. Standard conditions also apply for the operation of taxi networks. These are also directed at establishing and maintaining service standards such as driver safety and provision of access to booking services.

New South Wales' regulation of the industry is primarily concerned with quality, reliability and safety issues. Giving effect to these principles through licence conditions creates entry costs for operators but generates a clear benefit to consumers by ensuring minimum safety and service standards across the industry.

The purchase and sale of licences is driven by the market. A taxi licence may be acquired either on the open market, by a broker or a private sale, or directly purchased from the Ministry of Transport at market prices. The Ministry issues licences on demand at the prevailing market price, in accordance with the requirements of the Act. As at 27 February 2004, Sydney Metropolitan ordinary taxi licences were valued at \$253,750. The cost of the most recent licence sale at the time of reporting was \$220,000.

Taxi licences are widely advertised for sale in newspapers. The Ministry of Transport's website also invites potential licence purchasers to contact the Taxi and Hire Car Bureau for advice on how to obtain a taxi licence. In addition, when the Ministry identifies areas currently under-served by taxis (for example, fringe metropolitan areas) it seeks expressions of interest from persons interested in operating a taxi service in the specified district. The expression of interest process determines the market value of licences and facilitates the subsequent issue of licences, thereby encouraging the development of a market to meet need. The Ministry allows licence fees to be paid in instalments in these cases, which reduces the up-front cost to purchasers.

Categories of licence

The primary types of taxi licence are summarised as follows:

LICENCE TYPE	CHARACTERISTICS
Ordinary	<ul style="list-style-type: none"> • tenure up to 50 years • renewable • transferable • based on current market value
Short term	<ul style="list-style-type: none"> • tenure up to 6 years (most issued annually) • non-transferable • value determined by the Director-General of Transport
Wheelchair Accessible Taxi (WAT)	<ul style="list-style-type: none"> • short-term licence, with strict operating conditions that give priority to wheelchair passengers • most issued annually • licence fees for country NSW - \$0 • licence fees for Sydney - \$1,000 p.a.

Since 1990, other licence types have also been introduced to meet market demand and the growing population of Sydney. These include fringe area licences; night licences; and peak availability licences (12:00 – 5:00 pm daily).

Comparison with other jurisdictions

Unlike other states, New South Wales does not restrict the supply of taxi licences, nor apply a public interest test before releasing taxi licences. Sydney has a better ratio of taxis per head of population (1:780 in February 2004) than Melbourne (1:1003) and a comparable ratio to Brisbane (1:773).

The value of licences in Sydney is driven by market demand, influenced by such factors as trends in tourism arrivals, economic conditions and the availability of drivers. The value of licences may therefore fluctuate from time to time. In February 2004, the market value of a licence in Sydney was \$253,750. This compares favourably with Melbourne (\$341,000) and Brisbane (\$303,500). Given the cheaper licence values in Sydney, purchasers of a Sydney taxi licence obviously have the opportunity to gain a higher return on investment.

Government's reform agenda for the taxi industry – raising industry standards

The NCC has requested advice on the Government's latest reform measures and intentions. Measures to improve licence circulation and service availability include:

- offering short-term (six year) plates at more attractive rates. It is noted that even at these lower rates there has been limited demand for plates. This would seem to suggest that the price of plates is not a major factor influencing demand;
- the issue of new taxi licences under the Government's Hire Car Compensation Agreement. As part of the compensation arrangements agreed in December 2003 with owners of perpetual hire car licences adversely affected by the deregulation of the industry, up to 300 Ordinary taxi licences will be provided to former hire care operators by 31 December 2004. This measure will increase the number of taxi licences in circulation by over 5 percent. The licences will be issued for the transport districts of Sydney, Wollongong and Newcastle. As at 25 February 2004, 85 licences had been issued; and
- the setting of licence fees for Wheelchair Accessible Taxis (WAT) at very low levels (\$1000 per annum for Sydney and nil for elsewhere) to encourage take-up of WAT licences and to assist in meeting disability response targets. Other States generally base their WAT licences on market values, which are up to 50 percent of ordinary taxi values.

The Government is committed to reform in the taxi industry. Its major focus is the refinement of industry standards in line with customer expectations and the implementation of improvements to the efficiency of the market. These reforms will benefit and provide value for money for consumers and generate positive flow-on effects for taxi availability and levels of service, consistent with the main objectives of the Act. These reforms are being developed in consultation with the taxi industry. Recent initiatives include:

- Improved driver training

Taxi driver training is currently undertaken by registered training organisations. English language competency is assessed by Adult Multicultural Education Services (AMES). The Ministry of Transport currently assesses only two competencies: 1) taxi regulations; and 2) taxi locality knowledge.

The Government is placing greater emphasis on ensuring that the public is served by high quality taxi drivers. As part of a reform process for taxi training and assessment, the Ministry of Transport is proposing to establish independent assessment centres that assess competencies that directly affect the efficiency and effectiveness of service delivery, including English language; customer service; taxi operations; occupational health and safety (including operation of shields and alarms); and knowledge of taxi regulations.

The Ministry is also working with the AMES to ensure the setting of appropriate standards for English language assessment.

- No destination bookings

The introduction of “no-destination” dispatch is aimed at improving the availability and reliability of services. The experience of Brisbane and Melbourne has shown that the “no-destination” booking system addresses critical inefficiencies in taxi networks by directly allocating taxis to intending customers, regardless of destination. The NCC cited in its 2003 assessment that a survey of taxi users in late 2002 indicated that Sydney recorded the highest number of customers who had been unable to obtain a taxi (38 percent). However, this appears to be due to the scope for improving the efficiency of taxi networks, rather than a lack of taxis available in the market. The “no destination” reforms aim to directly address service efficiency.

In April 2004, the Government will commence a 12-month trial of a “no-destination” radio booking system in the Sydney market to reduce the incidence of job rejection by drivers. The reforms are aimed at yielding the following service improvements:

- reduced waiting time for customers;
- improved taxi services for those less mobile;
- elimination of drivers ‘cherry picking’ radio work; and
- greater utilisation of the Sydney taxi fleet.

- Compulsory E-Tags

Operator accreditation standards will be amended to make E-Tags compulsory for all taxi-cabs in New South Wales. This will lead to quicker service delivery for customers and more efficient cab operations generally. At present only approximately 50 percent of taxis have E-tags.

The Government is satisfied that the licensing system is the most direct and efficient way of regulating safety and quality standards in the taxi industry, and that it does not create an unreasonable barrier to entry. As noted above, there are no quantitative restrictions on the supply of licences or structural impediments imposed to entry to or exit from the industry. While performance standards impose an entry cost upon licensees and operators, the Government considers them essential to maintain consistent minimum standards for service provision. The costs are outweighed by the benefits to consumers and compensated for in the fares set by IPART.

The Government understands that, from the NCC’s perspective, such findings and, in particular, the description of the operation of the market for licences are contrary to that outlined in the IPART review of the Act in 1999. If requested to do so by the NCC, the Government will undertake another independent review of the *Passenger Transport Act* in relation to taxis against CPA principles. The NSW Government, however, considers that the above discussion of taxi

regulation should be sufficient for the NCC to assess review and reform activity as compliant in this area.

4.2 Tow Trucks

The tow truck industry in New South Wales is regulated by the *Tow Truck Industry Act 1998* (“the Act”). An NCP review of the Act was completed in March 2004 and will be forwarded to the NCC shortly.

The primary objectives of the Act are to promote safety and to ensure the integrity and probity of the tow truck industry. The need to promote safety arises from the potential for significant problems at the accident scene, which has been evidenced by criminal activity in the past including violence between tow truck drivers, bashing, the vandalism and destruction of trucks and smash repair shops, shootings and murder. The need to ensure integrity and probity derives from the scope for corruption. The 1998 Anderson Review of the Tow Truck Industry in New South Wales documented widespread practices of pressure tactics applied to consumers at accident scenes and the intimidation and corruption of public officials, including police officers, through payment of spotters’ fees.

The Act regulates tow truck activities at the point of pick-up, where most of the significant problems in the industry occur, and establishes a licensing system as an enforcement tool to ensure the proper conduct of operators and drivers.

The licensing system requires that applicants for tow truck licences and driver certificates comply with standards that are designed to protect the public interest. They include “fit and proper person” assessments and industry-specific requirements relating to vehicle design and equipment type, the latter aimed at ensuring the road-worthiness of trucks. The “fit and proper person” assessments centre on probity checks for specific criminal offences.

Any person may apply for a tow truck licence (whether a resident of New South Wales or not) and there are no restrictions on the supply of licences or driver certificates. There are no restrictions on operating areas in which a licensed towing operator may undertake work. There are also no restrictions on the number of towing operators who may enter the market and no public interest tests are applied in the issuing of tow truck licences (in contrast to, say, Victoria). Application fees for licences are set to recover the costs of administration. For tow truck operators in metropolitan areas, this is currently \$770 plus \$290 for a set of registration plates and, for drivers, fees are \$152 per annum.

The review found that licensing requirements represent a low barrier to entry to the industry and that the licensing system provides a net public benefit.

Clause 69 of the Tow Truck Industry Regulation 1999

Clause 69 of the Tow Truck Industry Regulation 1999 (“the Regulation”) provides an exemption to the licensing requirements for a person who holds a tow truck licence in another State or Territory, with the exception that the exemption does not apply in respect of towing work that starts in New South Wales. An effect of this clause is that a person can be involved in towing into New South Wales but not (without a New South Wales licence/certificate) towing from New South Wales.

The regulatory focus on towing operators who commence towing from a point within New South Wales reflects evidence that the accident scene is the key area to be regulated on public interest grounds. The review observed that there are clear public benefits in ensuring that tow truck drivers present at accident scenes in New South Wales have passed the probity tests established in New South Wales laws.

The review noted, however, that clause 69 may be overridden by requirements in the Commonwealth *Mutual Recognition Act 1992* (MRA) and therefore recommended that the regulation be amended to conform to the MRA's requirements.

The Minister for Transport Services has approved amendments to the regulation to provide that interstate tow truck operators and drivers will no longer be required to obtain a New South Wales licence for towing work that starts in this State. This removes any perceived anti-competitive detriment associated with this clause. Interstate operators and drivers will need to meet and follow the requirements included in the MRA for registering to undertake towing work in New South Wales. Pursuant to section 20(5) of the MRA, the registration conditions will apply similar "fit and proper" person criteria to interstate operators and drivers wishing to have their interstate licence or certificate recognised as it does to New South Wales operators and drivers.

4.3 Marine Safety

The *Marine Safety Act 1998* ("the Act") consolidates a number of existing marine safety Acts. Much of the Act has not yet commenced as a related regulation on marine safety, which is to be introduced in conjunction with the commencement of the Act, has not been finalised. The regulation cannot be finalised until the Commonwealth completes its review of the Uniform Shipping Laws Code, which will provide the basis for common national safety standards for commercial vessels in Australia.

The Commonwealth has advised that the Uniform Shipping Laws Code is still not close to completion. Accordingly, New South Wales has decided not to delay further the commencement of provisions dealing with recreational vehicles, which make up the bulk of the Act, and the associated regulations. It is expected that this will occur in the latter half of 2004. Once the relevant provisions are commenced, the existing Acts they replace will be repealed.

An NCP review of the Act was completed in March 2004. The principal objectives of the Act are to ensure the safe operation of vessels on State waters; promote the responsible operation of vessels in those waters so as to protect the safety and amenity of others; provide for the investigation of marine accidents and for appropriate action following any such investigation; and consolidate marine safety legislation.

The review found that the main competition-related provisions in the Act relate to the requirement to hold licences, registrations, certificates and other approvals connected with the operation of sea vessels (collectively referred to here as "marine safety licences").

These include certificates required for the registration and operation of vessels. Vessel Registration Certificates are required for most vessels in New South Wales, whether recreational or commercial. The purpose of registration is to facilitate the identification of vehicles and to reduce the potential for vessel theft. Similar registration requirements apply in all other jurisdictions, with the exception of the Northern Territory. Operational certificates, such as Survey Certificates, attest that vessels are constructed to a minimum safety standard, are seaworthy and carry the appropriate safety equipment. Survey Certificates issued by marine authorities in other jurisdictions are recognised in New South Wales. There is no restriction on

who may apply for a Survey Certificate, nor is there any limit on the number of certificates that the NSW Waterways Authority will issue.

The Act also provides for accreditation of certain persons to ensure their competency in operating or undertaking functions on the vessel. For example, the Waterways Authority issues Certificates of Competency to the master or crew of a commercial vessel. The criteria for certification relate to minimum age, fitness, experience, training and nationally accepted minimum crewing provisions. The aim is to prevent unqualified or unfit persons from commanding or crewing a commercial vessel. The requirements are consistent with the approach taken by the Commonwealth Maritime Safety Authority and by all states and the Northern Territory. Similarly, marine pilots, who are responsible for the navigation of large ocean-going vessels moving through and berthing in major ports where pilotage is compulsory, must demonstrate an appropriate level of knowledge and experience.

The NCP review considered the costs and benefits of each marine safety licence regulated by the Act and concluded that the public benefits of the licensing system outweighed any anti-competitive effect. The review found that in the area of marine safety, co-regulation was not a feasible alternative and that co-regulation could actually impede competition by industry incumbents by placing more onerous requirements on potential entrants. The review also stated there was risk that moving to co-regulation could place New South Wales in breach of the relevant international conventions on maritime safety. The review recommended that the Act, and the marine safety licences established by the Act, be retained as:

- there is a demonstrated need to maintain the safety requirements included in the Act;
- mutual recognition protocols apply in respect of registration certificates, survey certificates and certificates of competency issued by marine authorities in other States or jurisdictions;
- no one is unreasonably precluded from undertaking the role of master or crew on a vessel; and
- the net public benefit of the present restrictions outweighs any competition costs.

The Government has accepted the findings and recommendations of the review. A copy of the review report was forwarded to the NCC on 15 April 2004.

5. Health and Pharmaceutical Services

5.1 Dentists

In its 2003 assessment the NCC assessed the *Dentists Act 1989* and *Dental Practice Act 2001* as restricting competition by restricting the employment of dentists by non-dentists. For the 2004 assessment, the NCC has sought advice on any developments in relation to this policy.

Schedules 3 and 4 of the National Competition Policy Amendments (Commonwealth Financial Penalties) Bill 2004 (“the Bill”), currently before the NSW Parliament, propose amendments to the *Dentists Act 1989* and *Dental Practice Act 2001*, respectively, to remove restrictions on who may employ dentists and persons or bodies in association with whom dentists may practise.

To ensure that the health and safety of consumers is protected, the Bill introduces provisions which prohibit employers from directing or inciting a dentist they employ to engage in unsatisfactory professional conduct, including over-servicing.

5.2 Optometrists

In its 2003 assessment the NCC assessed the *Optometrists Act 2002* (“the Act”) as restricting competition by retaining certain restrictions on the ownership of optometrical practices by non-optometrists. The NCC has requested advice on how the Government is addressing these restrictions.

Schedule 5 of the National Competition Policy Amendments (Commonwealth Financial Penalties) Bill 2004 (“the Bill”) proposes amendments to the Act to remove restrictions on persons or bodies that may carry on the business of optometry. Similar to the approach taken for dentists’ regulation, the Bill introduces a prohibition on employers directing or inciting an optometrist they employ to engage in misconduct.

5.3 Nurses

The NCC has requested advice on whether proposed amendments to the *Nurses Act 1991* were passed without major amendment by the NSW Parliament. The Nurses Amendment Bill 2003 was passed without amendment on 16 September 2003 and assented to on 30 September 2003.

5.4 Podiatrists

The NCP review of the *Podiatrists Act 1989* (“the Act”) was completed in March 2003. The NCC noted in its 2003 assessment that the Podiatrists Bill 2003, which proposed to repeal and replace the Act and to implement the review recommendations, was consistent with the CPA guiding principle. The Podiatrists Bill was passed without amendment by the NSW Parliament on 12 November 2003 and assented to on 20 November 2003.

5.5 Pharmacy

In its 2003 assessment, the NCC assessed the *Pharmacy Act 1964* (“the Act”) as restricting competition by imposing a cap on the number of pharmacies that a pharmacist can own and preventing friendly societies from operating pharmacies.

The NCC also noted that the Act restricts the ownership of pharmacies by non-pharmacists, but that the restriction may provide a net public benefit in the short term and will be reviewed in due course as part of ongoing NCP legislation review obligations.

Schedule 6 of the National Competition Policy Amendments (Commonwealth Financial Penalties) Bill 2004 (“the Bill”) proposes amendments to implement the key competition-related reforms recommended by the national review of pharmacy legislation. These include removal of restrictions on the number of pharmacy businesses that pharmacists may carry on or in which they may have a pecuniary interest and the ability of friendly societies to carry on pharmacy businesses.

As the NCC is aware, the Prime Minister has recently been reported as having made commitments to protect community pharmacy from competition*. The Prime Minister wrote to the NSW Premier on 5 April 2004 confirming his support for ‘(maintaining) the principle of community pharmacy’ and to request that New South Wales undertake another public benefit review of pharmacy legislation before proceeding with its proposed legislative amendments.

The NSW Premier wrote to the Prime Minister, also on 5 April 2004, indicating that New South Wales was only proposing to introduce changes to pharmacy legislation in order to ensure that competition payment penalties are not imposed on New South Wales in future years and that New South Wales would withdraw the proposed amendments if the Commonwealth confirmed that it would not impose competition penalties on New South Wales in respect of pharmacy.

The NSW Government will update the NCC on the progress of proposed reforms to pharmacy legislation, if necessary, subsequent to the submission of this report.

* “PM backs pharmacies against supermarkets” *Sydney Morning Herald*, 5 April 2004

6. Legal and Other Professional and Occupational Licensing

6.1 Legal Profession

NCP review

The report of the NCP review of the *Legal Profession Act 1987* was completed in 1998. The NSW Government has outlined in detail the implementation of reforms arising from the review as well as other major competition-based reforms to the regulation of the legal profession in previous reports to the NCC (see reports for the year ending December 2000, pp 144-145; and 2003 report, pp 19-22).

New South Wales has implemented the majority of the NCP review's recommendations, with the exception of those relating to two matters, namely: 1) the enactment of a uniform scheme for the regulation of the legal profession and 2) reform of arrangements for professional indemnity insurance. Both of these issues are being resolved at a national level under the oversight of the Standing Committee of Attorneys General (SCAG). Progress on the review and reform of these issues is outlined below:

National model laws

SCAG issued a joint communiqué outlining model provisions as the basis for consistent laws for the regulation of Australia's legal profession in August 2003. The detailed drafting of model provisions is nearing completion and SCAG agreed in March 2004 to aim for their public release in mid April 2004. The model provisions:

- provide for a uniform standard for law degrees and practical legal training and the recognition of those qualifications across jurisdictions;
- allow legal practitioners to practise interstate with one practising certificate;
- provide for uniform rules dealing with trust accounts and fidelity funds;
- provide for uniform definitions of misconduct and provisions preventing practitioners struck off or penalised in one jurisdiction from simply moving to practise law in another jurisdiction;
- agree on a nationally consistent set of provisions facilitating the establishment of incorporated legal practices and multidisciplinary practices;
- provide for uniform provisions regarding the reservation of legal work;
- standardise the requirements for disclosing information on legal costs to clients, thereby ensuring that both clients and practitioners will have the same understanding of their rights and obligations regardless of where they live; and
- create a nationally uniform system governing the entitlements of foreign lawyers to practise the law of their home country in Australia.

The NSW Government agreed in principle to the adoption of the model laws in October 2003. A NSW Bill implementing the model laws for New South Wales will be drafted once the model laws themselves are settled. The Government anticipates introducing legislation to implement the national model provisions later this year.

Professional indemnity insurance

As part of the national model laws project, SCAG is developing national minimum standards for professional indemnity insurance. New South Wales is considering arrangements for professional indemnity insurance for solicitors in the context of national deliberations on this issue. In August 2003, SCAG requested officers to continue to work with the Law Council of Australia, in consultation with local schemes, on the feasibility of a proposed reinsurance model and an automatic exemption model for professional indemnity insurance.

The Law Council anticipates reporting on the reinsurance model in mid 2004. SCAG has agreed to certain principles if an automatic exemption model can be implemented, including that exemptions will be made available to a practitioner in an interstate firm who proves that he or she will have cover complying with the national standards; and that it will consider whether all practitioners should be required to carry insurance meeting the national standards. New South Wales is actively participating in this project through the SCAG progress.

Advertising of Personal Injury Services

In its 2003 assessment, the NCC expressed concerns about the introduction of restrictions on advertising in relation to workers compensation and personal injury legal services in 2002 and 2003.

As outlined in New South Wales' report to the NCC for 2003, the restrictions on advertising of personal injury services were introduced in response to the problem of dramatically escalating costs of public liability insurance and reduced public access to insurance. One of the factors that led to increasing premiums was the sharp rise in the number of public liability claims.

The Government is acutely aware that the restriction of advertising by lawyers and agents may have adverse consequences, such as less information for injured workers so that they are not aware of their rights to compensation. Against this, however, unrestricted or unfettered advertising may result in an increase in unmeritorious or fraudulent claims.

The NCC has noted objective evidence provided by New South Wales on the growth and cost of personal injury claims, in particular small claims. Other evidence in support of this is seen in newspaper reports of APRA figures that indicate that the number of claims rose 60 percent from 55,000 claims in 1998 to 88,000 claims in 2000. This growth was fuelled by increasing numbers of smaller claims and it appeared that one of the reasons for the growth in small claims was advertising by lawyers to encourage people to make personal injury claims. It appeared that this advertising encouraged people to claim, regardless of the real merits of the case or the claimants' genuine need for compensation.

The Council has criticised New South Wales for failing to consider less restrictive options. This is not the case. The restrictions on advertising were introduced as one of a range of measures, including a significant re-write of tort law, to tackle the issue of the growing cost of public liability insurance premiums.

New South Wales has implemented a number of important reforms that the NCC has suggested as options possibly less restrictive of competition than advertising restrictions, including limits on damages; providing greater protection from civil liability to certain persons and organisations in appropriate circumstances; reducing the number of claims by amending the standard of negligence and what counts as negligence in certain situations; and introducing proportionate liability for claims so that a person will only be liable to the extent of their responsibility.

It is important to point out that other reforms to tort law do not directly meet the same objective as the reforms relating to legal advertising. Reforms to legal advertising were primarily enacted to deal with the increasing number of spurious and unmeritorious claims. Inappropriate advertising contributed to this increase.

Other less restrictive options were trialled before the 2003 regulations were introduced.

Between 1997 and April 2001 advertising in workers compensation matters was regulated through a system whereby specific phrases were prohibited (e.g. “no win no fee”), and advertisements were required to carry a warning that penalties applied for false claims.

During this period the deficit for the WorkCover scheme grew from \$788 million to \$2.76 billion. Similarly the number of common law claims (as opposed to no-fault statutory benefits) grew substantially.

In April 2001, a system was introduced whereby lawyers could still advertise their name, address and the fact that they specialised in workers compensation. These reforms were extended to personal injury more generally in March 2002 following the crisis in public liability insurance that emerged in late 2001. The intention was that lawyers could only advertise their name, address and specialty in personal injury.

In April 2003, these restrictions were amended as it became clear that lawyers were side-stepping the existing regulations through creative advertising. The limited exemption to advertise specialty was being stretched to the limit, with images inviting people to make claims for compensation.

After testing the less regulatory options without success, it became apparent that the only form of regulation that was likely to be successful was a complete ban on advertising on personal injury advertising.

The adverse impacts of advertising restrictions are mitigated by factors that address other market failures. As noted above, the regulations deter the growth in fraudulent and exaggerated claims, the cost of which is passed on through insurance premiums. For example, while an injured worker may incur costs in seeking to identify a lawyer, a growth in unmeritorious claims will result in significant costs for the workers compensation scheme because costs in most matters are rarely, if ever, paid for by the lawyer or agent. In total, legal costs accounted for over \$250 million of total scheme costs (or about 11 percent) in 1998-1999. This rose from less than \$100 million of total scheme costs in 1989-1990. In common law matters, plaintiff solicitors receive about 16 percent of compensation awards.

It has also been suggested that advertising has a ‘cultural effect’ that results in increased expectations about the amount of compensation to be provided. During 1997, the Office of the Legal Services Commissioner noted that misleading advertisements were the cause of an increasing number of complaints.

The Government is of the firm view that any restrictive impact of the advertising rules in New South Wales is outweighed by the positive impact on levels of litigiousness in the personal injury area and the restriction is necessary, at this time, to achieve the Government’s objective of reducing unmeritorious claims, which is fundamentally in the interest of the New South Wales community as a whole.

6.2 Wool, Hide and Skin Dealers

The NCP review of the *Wool, Hide and Skin Dealers Act 1935* (“the Act”) was completed in June 2002. The NCC noted in its 2003 assessment that proposed reforms to the Act arising out of the NCP review were consistent with NCP principles. The Wool, Hide and Skin Dealers Bill 2004, incorporating these reforms, was passed by the NSW Parliament on 9 March 2004 and assented to on 17 March 2004.

6.3 Travel Agents

The review of the *Travel Agents Act 1986* was undertaken as part of a national review of travel agents legislation. The Standing Committee of Officials of Consumer Affairs (SCOCA) has been commissioned by the Ministerial Council to oversee the implementation of agreed reforms arising out of the NCP review. A working group, chaired by Western Australia, is advising on the implementation of NCP review recommendations. New South Wales is progressing towards the implementation of reforms but the completion of reform activity has been delayed by the need to finalise at the national level a number of issues arising out of the review, including the review of contribution arrangements to the Travel Compensation Fund and its prudential and reporting requirements and review of qualification requirements to ensure uniformity across jurisdictions.

The NSW Acting Commissioner for Fair Trading wrote to the Department of Consumer and Employment Protection Western Australia on 4 February 2004 urgently seeking resolution of these matters. New South Wales is continuing to seek the expeditious resolution of outstanding matters so that reforms can be completed in this State as soon as possible.

6.4 Hairdressers

Part 6 of the *Shops and Industries Act 1962* required hairdressers to be licensed and prevented people from employing or engaging unlicensed hairdressers. The scheme under Part 6 also provided that only the NSW TAFE Commission could run hairdressing courses.

The NCP review recommended that these restrictions be removed, but that legislation continue to prevent unqualified people from hairdressing by specifying the qualifications required to act as a hairdresser for a fee or monetary reward. The Hairdressers Bill 2003 (“the Bill”) abolished the licensing system and the prohibition on employing or engaging unlicensed hairdressers, and removed restrictions on who could provide training services in hairdressing. The Bill was passed by Parliament without amendment on 29 October 2003 and assented to on 6 November 2003.

6.5 Commercial Agents and Private Inquiry Agents

The *Commercial Agents and Private Inquiry Agents Act 1963* (“the Act”) requires debt collectors and private inquiry agents to hold a licence and stipulates certain conduct requirements. The NCP review of the Act determined that the licensing system provided a net public benefit. However, it recommended some refinements to the licensing regime, including removing a requirement that a licensee must be in charge of each place of business, introducing a single licence to replace individual separate licences for commercial agents and private inquiry agents, and improving the efficiency and effectiveness of compliance requirements.

The NSW Government has agreed to the recommendations of the NCP review. The NCC noted in its 2003 assessment that the proposed reforms to the legislation appear to meet the guiding principles of the CPA.

New South Wales is currently finalising amending legislation, which is intended to be introduced in the current Budget Session of Parliament.

6.6 Architects

The NCC has requested advice on if and when legislative reform of the *Architects Act 1921* occurred. The Architects Bill 2003, which provided for the repeal of the *Architects Act 1921* and implementation of reforms agreed under the national NCP review, was passed by Parliament on 3 December 2003 and assented to on 10 December 2003.

7. Workers Compensation

For the 2004 assessment, the NCC has requested information on the Government's response to the McKinsey review of workers compensation arrangements, particularly with respect to workers compensation insurance arrangements, and whether the Government's position on the reforms will be influenced by inter-jurisdictional processes, including the Productivity Commission's current review of workers compensation arrangements.

The McKinsey review inquired into (i) the optimum underwriting/ insurance arrangements that would support delivery of the workers compensation scheme's objectives and Government policy principles; and (ii) the achievement of better scheme outcomes and performance in relation to price, service and efficiency; injury and claims management; risk management; funds management and premium collection. The report of the review was released on 8 September 2003.

The review recommended that private underwriting of the Scheme not be pursued until the Scheme is fully funded and financially stable. In order to improve the operation of the scheme and delivery of services and, ultimately, restore financial stability to the Scheme, the report recommended:

- opening the market to allow specialist service providers to tender for core functions within the New South Wales workers compensation market, including funds investment, claims management, premium assessment and collection, and related activities. This would allow specialist businesses other than licensed insurers to undertake these specific roles and functions;
- unbundling the existing functions of insurers so that the most effective businesses (agents) are selected to manage each of these functions and enabling specialised management of general, long-term and catastrophic care claims;
- making WorkCover a stronger manager of the Scheme by giving it greater powers to manage the performance of contracted agents;
- providing WorkCover with responsibility for initiatives with Scheme-wide implications, including Scheme-wide legal strategy, fraud and premium compliance enforcement; and
- establishing pilot projects, in co-operation with the current insurers, to deliver savings to the Scheme.

McKinsey anticipated that savings to the scheme from the implementation of these reforms would be in the order of \$2 billion over the next five to ten years.

The NSW Government amended the *Workers Compensation Act 1987* in November 2003 to support the implementation of the report's recommended reforms. The amended Act retains the current insurance arrangements of the Scheme but replaces the six current managed fund insurers and their separate trust funds with a single Nominal Insurer, which is able to contract with Scheme agents to conduct insurance business on its behalf and to provide funds management advice and services. The WorkCover Authority of NSW acts for the Nominal Insurer and exercises the powers of the Nominal Insurer. In this way, WorkCover oversees the management of the Scheme, but will not act as insurer or manage individual claims.

The amended Act provides for agents to be appointed under contracts, instead of the previous open-ended licensing system. Contracts will allow for more flexibility to enable WorkCover to engage specific services, monitor performance and take appropriate action. The amended Act provides that WorkCover is able to conduct performance audits of Scheme agents and of specialised and self insurers. This power clarifies WorkCover's existing regulatory role and can be used to ensure, for example, that agents comply with provisional liability, injury management and return to work obligations. Tenders for claims agents are anticipated to be issued in late 2004, with a transition to the new agents from mid 2005.

To allow for more efficient use of Scheme resources, the amended Act also allows Scheme funds to be centralised into a single Fund for more effective investment of funds by firms that specialise in asset management, subject to appropriate protections to ensure that funds may only be used for the purposes set out in the *Workers Compensation Act*. A tender for management of the Fund will be issued in mid 2004 with a view to award in late 2004.

These structural and operational improvements to the WorkCover scheme continue the process of reform of the workers compensation system in New South Wales that began in June 2000 and which is aimed at delivering sustainable Scheme costs, appropriate treatment and outcomes for injured workers and restoring the financial stability of the Scheme. The Government will give due consideration to any report from the Productivity Commission on workers compensation arrangements. This consideration will obviously be in the context of the significant reforms that have been implemented to the WorkCover Scheme and the success of these reforms as demonstrated in the improvement of the performance of the Scheme over the past three years.

8. Fair trading and consumer protection legislation

8.1 Funeral Funds

The *Funeral Funds Act 1979* (“the Act”) regulates the operation of funeral contribution funds (where a member makes regular payments which contribute to a funeral service or provide a cash benefit towards the cost of the service) and pre-paid funeral funds (where the consumer enters into a pre-paid contract for a specific service). Specifically, the Act aims to protect pre-payments made by consumers for funeral services through the registration of funeral funds.

The review of the Act (released April 2002) established a net public benefit for retaining the registration system and key consumer protections such as ensuring that industry participants are of fit character and consumer rights are clarified in pre-paid contracts. The review, however, recommended the removal of restrictions on how a funeral fund should be constituted, named and managed.

The Funeral Funds Amendment Bill 2003 (“the Bill”), incorporating recommended reforms, was passed by the NSW Parliament on 9 March 2004 and assented to on 17 March 2004. The Bill:

- removed the cap on the maximum level of a benefit that may be paid to a consumer through a funeral contribution fund and management expenses that may be charged by a fund;
- removed the requirement that a funeral benefit business open and maintain a bank account in New South Wales,
- removed the maximum number of fund directors permitted to manage a fund; and
- removed other outdated provisions including restrictions on nomenclature, to reflect current industry practice.

The Bill also made other amendments to strengthen protections for pre-payments and ensure the consistent and efficient administration of the Act, including requiring all persons carrying on funeral fund businesses to be registered, allowing for actuarial investigations to be undertaken into funds, and more transparent and accountable registration provisions.

8.2 Trade Measurement

The review of the *Trade Measurement Administration Act 1989* and *Trade Measurement Act 1989* was undertaken as part of a national review of trade measurement legislation, led by Queensland. The review has recommended that existing legislative provisions be retained, however, further work is anticipated to examine the effects of two matters raised during the course of the review, namely the definition of meat and the unit pricing of pre-packaged goods sold in non-rigid containers. The review report will be finalised when it is approved by the Ministerial Council on Consumer Affairs. The report is awaiting the release of a public benefit test by Queensland before being submitted to the Ministerial Council.

On the two matters for further review, the Trade Measurement Advisory Committee has proposed amendments relating to the unit pricing of pre-packaged goods. These amendments, when drafted, will need to be reviewed by the Trade Advisory Committee and then approved by the Ministerial Council. Victoria will lead a review of the definition of meat with the participation of other jurisdictions.

The New South Wales Minister for Fair Trading wrote to the Queensland Minister for Fair Trading, Tourism and Wine Development on 16 February 2004 urging that the review of the uniform trade measurement legislation be completed expeditiously. New South Wales will continue to seek resolution of outstanding matters so that reforms can be completed in this State as soon as possible.

9. Social Regulation (Gambling)

9.1 Lotteries

While the *New South Wales Lotteries Corporatisation Act 1996* and *Public Lotteries Act 1996* (“the Acts”) were not listed for NCP review the NCC has requested advice on the progress of statutory reviews of both Acts, which incorporated an assessment of NCP issues.

The Acts were found to generally comply with NCP principles. The primary restriction under the lotteries legislation relates to NSW Lotteries Corporation’s exclusive licences to conduct certain lottery games until a legislated expiry date of 1 July 2007. The reviews recommended that the exclusive licence arrangements be retained on net public benefit grounds until the expiry date (licences will become contestable after this time). The review reports were tabled in the New South Wales Parliament in December 2002.

In its 2003 assessment, the NCC deemed review and reform activity incomplete as the Government had not at that stage formalised its response to the reviews of the Acts. The Government has endorsed the statutory reviews’ recommendations, which completes New South Wales’ review and reform activity in relation to the competition provisions of the Acts.

9.2 Casino

The review of the *Casino Control Act 1992* (“the Act”) was completed in December 1998. The review report recommended that the primary restriction under the Act, a statutory prohibition on the establishment of more than one casino in New South Wales, be retained on net public benefit grounds.

The Government endorsed the NCP review’s recommendations and released the report on 10 October 2003, which completes New South Wales review and reform activity.

9.3 TAB Investment Licence

In its 2003 assessment, the NCC has assessed reform as not being compliant with CPA obligations due to the retention of a 15-year exclusive licence arrangement with TAB Limited (TAB) to supply, finance and share the profits from the operation of gaming machines in hotels.

The NCC has noted that whilst the activities of TAB under the terms of the licence will increase competition, even greater competition would result if suppliers were allowed to carry out similar functions.

New South Wales outlined in detail its public benefit case for making the investment licence an exclusive licence for TAB. As the NCC has acknowledged in its assessment, this arrangement has increased the level of competition in the market.

It is important to note that before the investment licence arrangement was introduced, only clubs or hotels could own gaming machines on their premises. While this was considered adequate for many years, the advent of substantially more expensive computerised machines meant that not all hotels had the financial capacity to buy the new product or even subsequent second hand machines as they filtered onto the market.

The ability of such hotels to finance purchases of the new generation machines was also constrained because banks and other financiers would not lend on terms that the venues could afford. The new generation machines, however, were preferable to the existing machines because of the improved monitoring and probity oversight that could be applied to them (in addition to their ability to deliver superior gaming products for the benefit of consumers and owners).

The Government's rationale for introducing the investment licence was designed to address the above issue and this is detailed in the NCC's third tranche assessment.

Essentially, the investment licence arrangement contains the following three components:

1. the ability to supply gaming machines;
2. the ability to finance the acquisition of gaming machines; and
3. the ability to enter into profit-sharing arrangements with hotels as part of terms of supply.

TAB competes with other commercial operators and financial institutions with respect to points 1 and 2 above. Only the capacity to profit share with hotels in gaming machine revenue is exclusive to TAB.

The profit-sharing exclusivity was premised on probity considerations, which TAB was able to satisfy at the time. As TAB is a licensed body, it can be subject to disciplinary action. The Government was particularly concerned with maintaining responsible gambling policies. Allowing other dealers and sellers to share in the profits of gaming devices raised potential conflicts of interest which could undermine these policies.

The ability to enter into profit-sharing arrangements does not give TAB a competitive advantage. While it is an option not available to other dealers and sellers, no hotel will enter into such arrangements unless TAB is able to offer a material advantage to the acquirer in some other aspect of the transaction – whether that is machine quality, purchase price, finance costs or terms of trade. For the option to be exercised, TAB would need to make competitive concessions in the other elements where it is subject to vigorous competition.

TAB has advised that only nine hotels (involving 92 machines) are currently involved in profit-sharing arrangements. When compared to the total New South Wales market of 1830 hotels (with gaming machines) this share is less than 1percent. This result does not suggest that TAB enjoys a competitive advantage given that the exclusive licence has been in place for more than five years.

New South Wales believes that the introduction of TAB Ltd as a gaming machine owner/supplier/financier through the vesting of the exclusive licence has met the Government's policy objectives and has been effective in widening the market. The licence is subject to a legislated expiry date. It has improved the level of competition without evidence of any material impact on competition arising from the one area of exclusivity (i.e. profit sharing with hotels).

9.4 Racing and Betting

In its 2003 assessment, the NCC deemed review and reform of the *Racing Administration Act 1998* as non-compliant with CPA obligations due to the retention of minimum bet levels for bets placed over the telephone with bookmakers and cross-border restrictions on advertising by betting operators not licensed in New South Wales.

As the NCC noted in its 2002 assessment, the minimum bet restriction (then \$200) limits competition, if at all, to only a limited degree. In February 2003, New South Wales reduced the minimum bet level from \$200 to \$100 on metropolitan galloping meetings and abolished minimum bets on all other galloping, harness and greyhound racing meetings. On 1 October 2003, New South Wales reduced the remaining minimum bet on metropolitan gallops from \$100 to \$50. The minimum bet will be abolished from 1 July 2004.

In relation to the advertising restrictions, the NCC has stated that the NCP report did not provide a convincing case that the restriction was the best means of addressing certain market failures and social issues associated with betting on racing. Advertising restrictions are not unique to New South Wales, being found in most other Australian jurisdictions.

The original NCP review examined the suite of New South Wales Racing and Betting legislation. To address NCC concerns, New South Wales commissioned the Network Economics Consulting Group (NECG) to undertake a more focused NCP review of the cross-border advertising provisions of the Act. A copy of this report was forwarded to the NCC on 15 April 2004.

The NECG review found that the advertising restriction addresses four major market failures related to the wagering and racing industries in New South Wales. These are 1) the scope for free riding, 2) the existence of scale economies and integrity benefits from totalisators, 3) integrity and information asymmetries that, left unchecked, will lead to an inferior product and smaller wagering market and 4) the ability to sustain responsible gambling policies if such restrictions were removed.

The review observed that it is difficult to establish and enforce property rights over racing results (on which the racing and wagering industries are largely based), which gives rise to a significant free rider problem and the need for regulation over funding arrangements to ensure the continued viability of the racing industry. All States provide for the pooling of bets from TAB customers and require that a proportion of that State's TAB earnings are paid to the racing industry for the use of its product. Despite this, there is a significant lack of competitive neutrality between other wagering entities in different jurisdictions due to different regulatory environments.

One important implication of these arrangements is that any development which threatens the revenues of the various TABs can have adverse impacts on the racing industries of the various States by threatening the primary source of funding. This can lead to a downward spiral whereby, as funding for the racing industry declines, so do prizes and other investments that maintain the appeal of organised racing events.

Advertising restrictions provide an important means of ensuring that those who obtain benefits from racing results contribute to the industry for the use of the product. For example, corporate bookmakers in the Northern Territory and the ACT do not pay product fees and operate under extremely favourable taxation and regulatory conditions relative to New South Wales. Removing restrictions on advertising would create the potential for diverting considerable business from the NSW TAB to corporate bookmakers in other States, which would have the flow-on effects of reducing the value and appeal of TAB's product due to the loss of economies of scale and major funding consequences for the racing and wagering industries in New South Wales.

There are also important economies of scale and ‘integrity’ benefits associated with totalisators in the form of reduced volatility of odds or returns on wagers. These effects can be undermined by non-totalisator wagering products (particularly “TAB-odds” products) that are legal in some other jurisdictions. Because perceptions of integrity are so important to maintaining custom in wagering businesses, a perceived reduction in integrity of the TAB pool can have significant effects on betting turnover. The combination of this with the free rider problem would have adverse spiral effects on the New South Wales racing and wagering industries.

Similar integrity problems may arise due to the information asymmetry between punters and bookmakers. In New South Wales, integrity issues are managed through probity and licensing regulation, which ensures oversight of the conduct of operators as well as, importantly, the integrity of racing events. The advertising restrictions provide essential protections to New South Wales residents, so that they do not suffer the consequences of the lack of security over punters’ funds offered by interstate bookmakers; rules of betting devised by bookmakers rather than by general consensus by the racing industry; and improper odds manipulation by interstate bookmakers as these bookmakers are not subject to a minimum wager obligation.

Removing advertising restrictions would also have the potential to significantly increase gambling activity, which is contrary to the Government’s social harm minimisation goals.

The review found that interstate advertising restrictions are the most effective way of addressing the market failure issues in the absence of equally applied regulation to all betting industry operators external to a jurisdiction and competitive neutrality between operators. Any alternative approaches to the advertising restrictions would require inter-jurisdictional agreement on funding transfer arrangements and/or regulatory alignment to address integrity-related and harm minimisation issues.

Such cooperation or agreement between jurisdictions is unlikely in the short term given strong incentives for smaller (in terms of racing industry size) jurisdictions to allow products (such as TAB-odds) that aim to benefit from the larger jurisdictions such as New South Wales (in effect, authorisation of ‘free riding’). New South Wales continues to lead work in inter-jurisdictional fora to alleviate the above practices and to achieve national consistency in betting regulation.

Given that cross-border betting issues are still being considered by State and Territory Ministers, New South Wales considers that there are strong public benefit grounds for maintaining restrictions on advertising by interstate bookmakers in New South Wales.

10. Other legislation

The NSW Government advised the NCC in December 2002 that it had not listed the *Children (Care and Protection) Act 1987*, *Children and Young Persons (Care and Protection) Act 1998* and *Environmental Planning and Assessment Act 1979* for review under the CPA and therefore did not intend to report on this legislation. The Council accepted that restrictions on competition in these Acts are being examined in the context of other review processes*. The following update is provided for the information of the NCC only.

10.1 Child care regulation

The NCC has requested information on the progress of replacing the *Children (Care and Protection) Act 1987*, and the regulations made under this Act, with a new regulation under the *Children and Young Persons (Care and Protection) Act 1998*. The proposed new regulation will include provisions for the licensing of children's services, information for parents, child numbers, staffing standards and administrative procedures. The proposed regulation has been subject to a rigorous, transparent assessment process to determine its regulatory impact, and wide consultation with stakeholders. This process has concluded and it is anticipated that the new regulation will be in place by 1 September 2004.

10.2 Environmental Planning and Assessment Act

The NSW Government advised the NCC in December 2002 that it would continue to provide information on 30 planning and land use reform projects to the Council. The Council accepted that the wider approach adopted by New South Wales in pursuing the thirty targeted planning and land use reform projects has merit.

Twenty-seven of the 30 projects have been completed or will be completed shortly. The three remaining projects primarily relate to the streamlining of planning approval processes and review of planning standards. These remaining reform projects have now been subsumed in a number of reviews to streamline and improve state, regional and local planning functions.

The Government is giving consideration to a series of reforms to improve the planning system, which have arisen from recent and continuing reviews of State, regional and local planning policies, *PlanFirst*, local development, major development, Ministerial consent roles, masterplans and developer contributions.

The Government response to these reviews will provide an opportunity to complete reforms of the planning and land use framework. The overall objectives of reforms being considered are to:

- improve and maintain the efficiency of the planning system;
- reduce transaction costs;
- balance environmental, social and economic priorities;
- realise community priorities;
- provide predictability and certainty for land use and economic development; and
- return consent roles to local government for minor or local matters, or matters which are largely of a day-to-day administrative nature.

Work is progressing on developing the detail of the reform proposals and an implementation plan.

* Letter from Ms Deborah Cope, Acting Executive Director, National Competition Council 21 March 2003

11. NON-PRIORITY LEGISLATION REVIEW AND REFORM

11.1 Human Tissue Act

The NCP review recommended that restrictions on the collection of homologous blood be retained in the interests of public health, but the removal of restrictions on autologous blood. The Health Legislation Amendment Bill 2004, which implements this recommendation, is currently before the NSW Parliament.

11.2 Lord Howe Island Act 1953 and Lord Howe Island Regulation 1994

The Government amended the *Lord Howe Island Act 1953* (“the Act”) in line with the NCP review’s recommendations in March 2004. The key competition restriction related to provisions vesting kentia palm seed in the Crown where it occurs on perpetual leasehold land and board control of its harvesting and sale. Following the amendments, leaseholders now have ownership of seed and may dispose of that seed from their perpetual leases as they choose.

11.3 MIA Wine Grapes Marketing Board

A second NCP review of the MIA Wine Grapes Marketing Board (“the Board”) in October 2001 recommended that the Board be re-constituted as an agricultural industry services committee with temporary powers to provide industry services functions and to set and enforce terms and conditions of payment (but not prices) by wineries to growers. The Government implemented these recommendations via the Wine Grapes Marketing Board (Reconstitution) Bill 2003, which was assented to on 10 December 2003.

Section 26 of the Wine Grapes Marketing Board (Reconstitution) Act provides for the expiry of this Act on 31 December 2007. This is consistent with the NCP review’s recommendations that a transition period be provided to avoid the significant structural adjustment costs that would arise from the immediate removal of regulation and to enable growers to develop the capacity to negotiate privately with wineries.

11.4 Motor Vehicle Sports (Public Safety) Act 1985

The Government is currently considering its response to the review. It is anticipated that any amending legislation will be introduced in the current session of Parliament.

11.5 Noxious Weeds Act 1993 and Seeds Act 1982

The review of the *Noxious Weeds Act 1993* (“the Act”) found that the objectives of the legislation can only be achieved by restricting competition, and that the Act should be retained based on net public benefit grounds. It did recommend refinements, however, to the regulation of noxious weeds to better achieve the Act’s objectives of weed control. The Government has approved the release of the report of the review, and generally supports the review recommendations.

The implementation of refinements will proceed in the second half of this year. This will include the repeal of the *Seeds Act 1982*, which has also been the subject of a separate NCP review.

11.6 Nursing Homes Act 1998

The Government has approved the recommendation of the NCP review to repeal the *Nursing Homes Act 1988*, and the transfer of a provision relating to staff numbers to the *Public Health Act 1991*. The repeal will be effected in a miscellaneous health amendments bill that is anticipated to be introduced later this year.

11.7 Partnerships Act 1892

The NCC has recently advised The Cabinet Office that it considers that New South Wales has met its NCP obligations for the *Partnerships Act 1892**.

11.8 Prevention of Cruelty to Animals Act 1979

The NCP review of the *Prevention of Cruelty to Animals Act 1979* recommended that the Act be retained based on net public benefit grounds. The key competition restriction related to the restriction of certain practices and procedures to registered veterinarians. This restriction has been addressed via recent changes to veterinary practice legislation (see section 3.9 of this report).

11.9 Private Hospitals and Day Procedures Act 1988

The report of the review of the *Private Hospitals and Day Procedures Act 1988* is currently being finalised. It is anticipated that the Government will make a decision on the report in mid-2004 and introduce any required amendments to legislation in the 2004 Spring session of Parliament.

11.10 Public Health Act 1991

The NCP report has been completed. The Government anticipates making a decision on the report shortly and introducing any legislative amendments in the Spring 2004 session of Parliament.

11.11 Public Trustee Act 1913

The NSW Government reiterates previous advice provided to the NCC that following a review of the *Public Trustee Act 1913*, the Government twice introduced legislative amendments to the Act. These proposed reforms were rejected both times by the NSW Parliament. Alternative means to implement the review's recommendations are not considered viable. At this time, New South Wales does not intend to present the legislation to Parliament for a third time.

11.12 Residential Tenancies Act 1987, Landlord and Tenant (Rental Bonds) Act 1977

The NCP review found that the current framework for the regulation of residential tenancies produced the greatest net public benefit for the community. Accordingly, the review did not recommend any legislative changes. The review, however, noted that there may be scope for greater flexibility in two minor areas, namely standard-form residential tenancy agreements and exemptions provided to certain landlords.

* E-mail dated 22 March 2004 from Mr Alan Johnston, Director, Government business and legislation, National Competition Council

These two areas are being considered as part of a strategic review of residential tenancy policy. This review will be subject to a public consultation process. Changes, if any, in these two areas will be integrally related to the Government's response to the strategic review. Given the NCP review's conclusion concerning this Act, the Government considers that it has complied with its CPA obligations in this area.

11.13 Retail Leases Act 1994

The *Retail Leases Act 1994* ("the Act") regulates the relationship between landlords and small to medium sized retail tenants. The NCP review of the Act recommended that the Act be retained on net public benefit grounds and minor amendments be made to streamline administrative requirements. The Government has endorsed the review and intends to implement the improvements in the current session of Parliament.

11.14 Rural Lands Protection Act 1998

The review of the Rural Lands Protection Act 1998 re-commenced in late 2003, following its deferral in 2002 due to the exceptional drought experienced by farmers. An issues paper for the review was released in February 2004 and public submissions to the paper have been sought by 15 May 2004. The Government anticipates receiving the final report of the review by August 2004.

11.15 Rural Workers Accommodation Act 1969

The review of the *Rural Workers Accommodation Act 1969* ("the Act") recommended that the Act be retained on net public benefit grounds. The review recommended, however, the abolition of prescriptive standards on accommodation and obsolete provisions in the Act. The Government has endorsed the NCP review and released the report. The Government is aiming to introduce legislative amendments in the current session of Parliament.

11.16 Small Business Loans Guarantee Act 1997

The *Small Business Loans Guarantee Act 1997* was repealed on 27 November 2003.

11.17 Stock (Artificial Breeding) Act 1985

Legislation to repeal the *Stock (Artificial Breeding) Act 1985* (Stock Diseases Amendment (Artificial Breeding) Bill 2004) is currently before the NSW Parliament.

11.18 Trade Measurement Act 1989

Please refer to the comments in section 8.2 of this report.

11.19 Trustee Companies Act 1964

The review of the regulation of trustee companies has been a national one, conducted under the auspices of the Standing Committee of Attorneys General (SCAG). The draft report of the review recommended that there be uniform licensing standards and APRA undertake prudential supervision of trustee companies on a fee-for-service basis with the States and Territories ("the States"). In April 2003, the Commonwealth advised the States that neither the Commonwealth

nor APRA would be involved in the regulation of trustee companies. The States, led by New South Wales, have subsequently continued to work on proposals for the uniform supervision of trustee companies.

At a meeting of SCAG in November 2003, the Commonwealth indicated it may reconsider its earlier opposition to APRA regulation and agreed to take a final submission from the States. The submission was made by the New South Wales Attorney General on behalf of other States on 6 February 2004. At the meeting of SCAG on 18-19 March 2004 the Commonwealth Attorney General indicated that he had sufficient information to enable all relevant Commonwealth ministers to deliberate on the issue.

Negotiations are continuing at senior officials level between the NSW Attorney General's Department and its Commonwealth counterpart and the Commonwealth Treasury. States are also working to finalise model trustee corporations legislation and have committed to take all necessary steps to implement the uniform scheme once a conclusion is reached by the Commonwealth.

If the Commonwealth again declines to undertake the regulation of trustee companies, steps can be taken to expeditiously finalise the reform of legislation based on the draft model. If APRA does not advise on developing prudential standards, it is proposed that a large national accounting firm be engaged to advise on the form prudential standards should take.

12. Competitive Neutrality

New South Wales has complied with its competitive neutrality obligations as required under the Competition Principles Agreement. The New South Wales Annual Reports to the NCC for 2000, 2002 and 2003 provided a comprehensive account of the application of competitive neutrality principles in New South Wales (Annual Report for the year ended December 2000 pages 3 to 28, 2002 Annual Report pages 42 and 43; and 2003 Annual Report page 37).

Attachment 1 provides an updated list of New South Wales General Government agencies that are required to apply competitively neutral costing and pricing principles to goods and services.

Attachment 2 provides updated information on Government Business Enterprises that have been corporatised or privatised. On 1 January 2004, the NSW Government combined the metropolitan functions of the State Rail Authority and Rail Infrastructure Corporation to form the corporatised entity, Rail Corporation NSW (RailCorp). State Water, currently a unit within the Department of Energy, Utilities and Sustainability, is intended to be corporatised from 1 July 2004.

12.1 Competitive Neutrality Complaints

During the reporting period, the Government received three complaints against the State Valuation Office, a commercial business unit of the NSW Department of Commerce (a general government sector agency). The Government is currently considering whether there are sufficient grounds to refer these complaints for independent investigation and report under Chapter 7 of the *Public Sector Employment and Management Act 2002*.

The Government expects that a decision on whether the complaints should be referred for independent investigation will be made shortly and the NCC will be advised directly of the decision once it is made. If the complaints are referred, the investigating body will be required to use its best endeavours to complete the investigation and report within ten weeks after receiving the complaint.

12.2 Information requested by the NCC on State Forests

12.2.1 How profitable was State Forests NSW in 2002-03? How profitable is State Forests expected to be over the next three years or more?

In 2002-03, State Forests' operating profit before tax was \$12.2 million, including significant items. Significant items totalled -\$9.5 million and related primarily to the revaluation of Self-generating and Re-generating Assets (SGARAs) (+\$57.1 million), losses incurred by superannuation funds (-\$15.1 million) and the write down of forest road assets (-\$56.4 million).

State Forests' Business Plans for the next three years forecast the following operating profits before tax, assuming SGARA market value increments of \$30 million per year:

- 2003-04: \$42.5 million;
- 2004-05: \$48.9 million; and
- 2005-06: \$53.5 million.

12.2.2 If State Forests NSW is not expected to meet its cost of capital, why not?

This question is interpreted to relate to State Forests' rate of return on assets rather than the cost of State Forests' capital borrowings, on which State Forests pays a commercially comparable interest rate.

State Forests is constrained in its ability to increase prices to compensate for revenue decreases or expenditure increases (see response to 12.2.3 for further detail). State Forests' revenues and expenditures are cyclical, mainly in line with activity in the building industry, which results in lower rates of return in certain periods.

State Forests has incurred abnormal expenses in recent times. Following the collapse of State Forests' public liability insurer, HIH Insurance, State Forests was required to pay \$5 million in compensation-related costs, which was not recoverable. In addition, two major customers defaulted on credit terms, incurring a total cost of over \$4 million.

In its 2003 report, the NCC noted that it was unable to confidently assess any government as "fully" meeting their obligations under CPA clause 3 for forestry businesses, as these businesses are yet to establish track records of earning 'adequate' profits. It is important to note that State Forests' current operating results and return on assets are largely a result of investment decisions made some 30 years ago. The value of high capital outlays made over the past 10-15 years to create new plantations is reflected in the balance sheet, but these new plantations will not yield strong commercial returns for a further 10-15 years. The long cycle associated with plantations makes it less meaningful to use return on assets as a short term performance measure.

The NSW Government is concerned about the NCC's continuing focus on State forestry agencies' returns on assets, particularly in light of the Commonwealth Competitive Neutrality Complaints Office's (CCNCO's) observation that "considerable caution needs to be exercised in drawing conclusions about agency performance from (such) estimates. In addition to information constraints which adversely affect the reliability of the estimates, market fluctuations, different age profiles in forests, circularity between asset values and log prices, and asset valuation methodology itself, can all have significant ramifications for measured rates of return" (CCNCO Research Paper "*Competitive Neutrality in Forestry*", 22 May 2001).

Further, the NSW Government notes that comparisons between the financial performance of State Forests and other forestry businesses are not comparing like with like:

- State Forests is not a pure plantation business. While its softwood plantations show strong profits (for example, \$33.6 million before tax and abnormals in 2001-02), State Forests also holds large areas of native forest. In addition, State Forests incurs significant expenses as a government agency that a private sector business would ordinarily not (such as road maintenance and community fire fighting). To illustrate, in 2001-02 and 2002-03 State Forests' return on assets was significantly affected by unusually high expenditure on fire fighting, fire prevention and the diversion of staff from normal activities into fire fighting due to the severe fires throughout New South Wales;
- many private sector forestry companies are vertically integrated and engage in activities such as timber processing and other value adding activities. These activities are not undertaken by State forestry operations and can significantly affect profit performance. Fletcher Challenge Forests' operations, for example, comprise seven sawmilling and manufacturing facilities in New Zealand in addition to plantations, while Evergreen Forests is a plantation forestry investment company that contracts out its forest development, harvesting and marketing functions;

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- comparisons with the performance of Great Southern Plantations or Timbercorp are also inappropriate. Both of these are managed timber investment companies. These companies' activities solely relate to management of plantations, wherein a share of the wood proceeds are taken when harvesting takes place in lieu of annual rent and/or maintenance costs. Managed timber investment companies typically require investors to pay an up-front sum of money for the plantation with either no ongoing costs or some ongoing fees for annual rent and maintenance.

12.2.3 Disclosure of timber prices assumed for valuation purposes

State Forests' forests are valued using location specific price data applied to detailed models of standing volumes for individual timber products, adjusted for product mix and regional variations. Since prices used for valuation purposes are specific to individual product lines for each regional area and some regions contain only one or two major customers, price disclosure is commercially sensitive.

There is no requirement that forestry businesses (public or private) disclose expected product prices. Annual reports for forestry businesses such as Great Southern Plantations, Gunns Limited, Auspine and Forest Enterprises Group show that these companies do not publicly release details of the timber prices assumed for asset valuation purposes. The NSW Government does not consider that State Forests should be subject to a higher standard of price disclosure than is required of or is the prevailing norm for private forestry businesses.

State Forests' valuation methodology is consistent with Australian Accounting Standard 35 and its valuations are independently audited.

The Government considers that the key issue is not whether State Forests discloses its expected product prices, but whether State Forests' actual prices comply with competitive neutrality requirements. State Forests' prices are consistent with CPA principles:

- State Forests uses an objective approach to setting its hardwood prices. Its Hardwood Log Value System was developed in consultation with industry in 1997-98. Under the System, hardwood prices are based on the market value of timber rather than internal costs or profit targets;
- State Forests is a price taker in the softwood market, competing against many private pine plantations in Australia, New Zealand and other countries. As noted by CCNCO, significant international trade in forest products means the maximum price attainable by a forest agency for logs will generally be the competitive price, determined implicitly by the world price of processed wood products. State Forests' pricing policy is to charge softwood royalties at the international market price adjusted for regional variations in timber quality, production costs and market outlook.

While individual contract pricing information is confidential, State Forests makes available examples of generic contracts on request. State Forests has also publicly provided indicative aggregate pricing information in the past (12.2.5 below is an example provided in response to a question on notice in the New South Wales Legislative Council). In addition, State Forests contributes data towards the Australian Pine Log Price Index, compiled by KPMG, in order to improve transparency in market pricing for pine logs in eastern Australia.

In the spirit of greater disclosure, State Forests will soon be commencing discussions with its hardwood customers with a view to making generic pricing information available to them. There will be no identification of individual customers' information directly or by inference. The provision of similar information on softwood pricing would be difficult since the concentration of softwood processors would enable inference of individual customers' prices.

12.2.4 Will State Forests NSW face the equivalent local taxes burden as private forest owners?

At present, State Forests' land that is privately leased or subject to an occupation permit attracts local government rates. As a consequence, local government rates are paid on around one third of State Forests' land. State Forests also makes significant contributions towards local government infrastructure and services (in the form of road/bridge maintenance, pest control, fire fighting, recreational facilities, fencing and gravel).

The Reciprocal Charging Committee examined the existing arrangements between State Forests and local councils as part of its *Review into the Reciprocal Charging Arrangements between State and Local Government Businesses*. The Committee quantified the value of State Forests' contributions to local councils and found that, while State Forests did not pay council rates on all its landholdings, the value of its contributions to local councils exceeded the value of its potential rate liability. The Committee noted that State Forests was at a commercial disadvantage to its private sector competitors in this regard.

The NSW Government has yet to finalise its policy position following the review. However, State Forests will be subject to any policy decisions that arise out of the review.

12.2.5 NSW Government response to Question on Notice # 535/ 2003 in the NSW Legislative Council

Price information for products sold in 2002-03 is summarised below.

Hardwood Products	Price Range	Average Price
High Quality Large Sawlog	\$40 - \$120	\$ 65
High Quality Small Sawlog	\$20 - \$40	\$ 28
Low Quality Sawlog	\$8 - \$18	\$ 14
Pulp	\$7 - \$15	\$ 11
Poles	\$30 - \$100	\$ 80
Girders & Piles	\$110 - \$200	\$ 145
Veneer	\$65 - \$120	\$ 70

The variability in high quality sawlog prices reflects the wide range of prices received for hardwood timber products. Coastal and Tableland hardwood eucalypt species exhibit a wide range of wood qualities and variations in terms of durability, strength and visual

Softwood Products	Price Range	Average Price
Sawlog	\$30 - \$60	\$40
Salvage	\$9 - \$25	\$19
Veneer	\$30 - \$60	\$38
Preservation Sawlog	\$7 - \$20	\$14
Pulpwood	\$3 - \$15	\$9

The range of prices for softwood products reflects variations in the quality of wood within each product category (i.e. diameter, log defects, pruned or unpruned, thinnings or mature) and distances from the mill.

13. New Legislation and Gatekeeping

New South Wales has an effective process in place for ensuring that all new legislation that may have an impact on competition is reviewed.

All New South Wales agencies are required to take into account the clause 5(1) guiding principle in the development of proposals for new and amending legislation. Regulatory impact analyses are required for all new legislation, regulation and quasi-regulation.

The NSW Cabinet Office (TCO), in its role as the coordinator of the Government's NCP program and advisor to agencies on regulatory best practice, has an arms-length role in scrutinising all legislative proposals. It advises the Premier on proposals' compliance with NCP prior to Cabinet consideration. This process involves formal mechanisms by which TCO is advised of the progress of, and has input to, proposals for new or amending legislation:

- TCO receives advice from agencies on all planned legislative proposals at the beginning of the year;
- the Inter-governmental and Regulatory Reform Branch of TCO receives copies of all detailed legislative proposals for analysis of their compliance with NCP and regulatory best practice. At this stage, further discussion, negotiation and/or review is triggered where new proposals are considered to have a non-trivial restriction on competition that has not been adequately justified against CPA principles;
- TCO provides advice to the Premier, as the Chair of Cabinet, on the regulatory impact, including compliance with CPA principles where relevant, of new proposals;
- TCO scrutinises all draft Bills for compliance with the Cabinet's decision prior to their introduction into Parliament.

TCO also works with agencies in the preparation of major new policy and legislative proposals and, through this process, encourages consideration of CPA principles at an early stage in the preparation of new legislation or policies. The presumption is in favour of achieving the government's goals by means that are the least restrictive of competition. TCO also provides advice to agencies on questions of compliance with NCP and how and when to conduct regulatory impact assessments in accordance with policy guidelines.

The NSW Government has previously provided the Commonwealth Office on Regulation Review and the NCC with detailed information relating to regulatory impact assessment processes and the role of the Legislation Review Committee of the NSW Parliament, which form part of New South Wales' overall gatekeeping mechanism. TCO is currently working on a range of projects to improve regulatory quality at the policy development (line agency) level as well as to refine its gatekeeper processes.

In respect of gatekeeping processes to facilitate consideration of inter-jurisdictional consistency when assessing regulatory impacts, the preparation of laws in New South Wales takes place in an environment where there is a high degree of awareness of competition policy principles and the related need to ensure consistency across jurisdictions or minimise costs, as relevant and appropriate, when markets cross jurisdictional boundaries.

Many matters of cross-jurisdictional significance are considered at Ministerial councils and related officers' groups, which are subject to the national standard-setting principles agreed by COAG. In addition, TCO in its gatekeeper role takes into account issues of inter-jurisdictional consistency, as relevant, in advice to the Premier and Cabinet.

In its 2003 assessment, the NCC considered that New South Wales' gatekeeping arrangements do not meet best practice principles because direct amendments to principal statutory rules may be made without the requirement for a further formal regulatory impact assessment (RIA). Section 4 of the *Subordinate Legislation Act 1989* requires that before an amendment to a rule is made, the responsible Minister is to ensure that, as far as is reasonably practicable, the guidelines set out in Schedule 1 (*Guidelines for the Preparation of Statutory Rules*) are complied with.

In respect of the NCC's comments concerning the Legal Profession Amendments (Personal Injury Advertising) Regulation 2003, New South Wales notes that section 216(2) of the *Legal Professions Act 1987* required that consultation take place with the relevant law bodies on the proposed regulation. For further comment on advertising restrictions, please see section 6.1.2 of this report.

The NSW Government strongly shares the NCC's interest in ensuring that NCP principles are reflected in proposals for new legislation, in accordance with clause 5(5) obligations. However, it is certainly not clear from the CPA that jurisdictions must report on the specific matters requested by the NCC to demonstrate compliance with clause 5(5).

CPA clause 5(10) does not require that jurisdictions provide a summary of gatekeeping activity by listing the number of legislative proposals that have been assessed and for which regulatory impact statements have been prepared, and the number assessed as meeting CPA obligations. Clause 5(5) does not require jurisdictions to comply with the specific gatekeeping arrangements that the NCC has established as its preferred model of compliance with clause 5(5), based on the Commonwealth system. The Government would further note that there are confidentiality constraints on making Cabinet material on proposals for legislation available to the NCC.

New South Wales would be happy to have separate discussions with the NCC on the operation of its gatekeeping mechanisms. Information on the above specific matters, however, is not provided for the purposes of this report.

14. Energy

14.1 Electricity

14.1.1 Derogations from the National Electricity Code

For the 2004 assessment, the NCC has requested information on existing derogations, the timetable for their expiry and an explanation for their continued need.

As per Chapters 8 and 9 of the Derogations (Chapter 8) section of the National Electricity Code (“the Code”), all derogations that are not in the nature of ongoing technical or procedural derogations required under the Code have expired, or are due to expire by 31 December 2004. In the NCC’s 2002 Assessment Report, the NCC accepted the need for, and appropriateness of, the current derogations, which relate to the implementation of a fully competitive National Electricity Market (NEM).

One of the derogations due to expire in June 2004 relates to competition in electricity metering. In New South Wales, electricity metering services are provided by local electricity network service providers. Currently, there is no competition in the provision of metering services for residential and small business customers in New South Wales or in other NEM jurisdictions. NEM jurisdictions are exempted from introducing competition under a derogation to the Code. New South Wales and the other NEM jurisdictions are discussing possible ways forward post the expiry of the relevant derogation.

14.1.2 Retail Market Competition and the Electricity Tariff Equalisation Fund

Retail market competition

The NSW Government implemented full retail competition for gas and electricity on 1 January 2002. Full retail competition gives New South Wales gas and electricity customers the choice of retail supplier.

The transition to a fully competitive NEM is occurring gradually. During the transition phase, the Government has put in place a package of customer safeguards for small customers. This package recognises that the introduction of consumer choice in the absence of a strong supplier market would create the potential for suppliers to exploit their market power through increased prices.

One of the most important of these customer safeguards is the provision of regulated contracts to small customers. These contracts act as default contracts for customers who have not negotiated terms and conditions with a retail supplier of their choice. The tariffs and terms and conditions are regulated by IPART.

Since the introduction of retail competition, around 560,000 small energy customers have entered into negotiated contracts with their existing retailer or a new retailer.

The chart below demonstrates energy customers' move from regulated tariffs to the competitive market. The numbers of customers who choose non-regulated contracts is expected to continue to grow in the future.



The introduction of competition has also increased the number of suppliers in the gas and electricity markets. There are 20 retailers licensed to supply electricity in New South Wales and 14 retailers licensed to supply gas in New South Wales.

Extension of regulated tariffs

The Government has a policy aim of reducing customers' reliance on regulated prices. Regulated tariffs are therefore a transitional measure. Regulated tariffs are not designed to impede the introduction of competition but to facilitate its development.

In September 2003, the Government considered whether regulated tariffs were still necessary. The Government decided to extend the regulatory arrangements underpinning regulated tariffs until 30 June 2007. This was based on a number of reasons:

- the gradual introduction of competition has been demonstrably successful (as shown in the previous section). The existence of regulated tariffs has not impeded consistent growth in the number of customers choosing their service provider, while it has provided an essential consumer protection during the transition to full competition. Given that a competitive market is still developing, the Government considered that providing the option of regulated tariffs for small customers should continue;
- inter-jurisdictional discussions regarding reform of energy market governance and regulatory arrangements at that stage were not complete (although they have subsequently been completed) and a transitional arrangement is required in any event to facilitate the transfer of some retail regulatory functions to the Australian Energy Regulator;
- the Government considers regulated tariffs to be the most transparent transitional arrangement available following an evaluation of alternative means to protect consumers.

The Government strongly supports regulated tariffs being structured in such a way that will encourage customers to enter the competitive market. Accordingly, the Government has instructed IPART to undertake a review of regulated electricity and gas tariffs. The terms of reference for the review state that:

- *The NSW Government acknowledges that international and national experience shows that the level of regulated retail tariffs relative to market based prices is the key determinant of how many eligible customers remain on regulated arrangements. For example, if regulated tariffs do not adequately reflect all of the costs of supply to small retail customers, both those customers and prospective competing retailers have little incentive to enter the competitive market. In order to promote competition, regulated retail tariffs which are below the cost of supply should be moved towards full cost reflectivity, as far as practicable.*
- *In setting prices IPART should consider the Government's policy aim of reducing customer reliance on regulated tariffs and the effect of its determination on competition in the retail electricity market.*
- *IPART should seek to ensure neutrality between regulated and negotiated contracts by taking account of the search and marketing costs incurred in the process of attracting customers to negotiated arrangements.*
- *Where practicable, regulated retail tariffs and regulated retail charges are at cost reflective levels for all small retail customers by 30 June 2007.*

It is anticipated that the outcomes of this review will be presented to the Minister for Energy and Utilities in early May 2004.

Extension of the Electricity Tariff Equalisation Fund (ETEF)

The decision to extend the arrangements supporting regulated tariffs has necessitated the continuation of ETEF until 30 June 2007.

ETEF is a mechanism for minimising the risk associated with the provision of regulated contracts. Standard suppliers offering regulated contracts are exposed to significant price risks in the NEM. If the wholesale price increases substantially, the retailer cannot pass this price increase through to the consumer. Conversely, the existence of ETEF provides that at times when the pool price is lower than the regulated price, standard retailers cannot use the extra revenue to cross-subsidise its competitive customers, which would undermine the competitive market.

The decision to extend the operation of ETEF followed an examination of other options for minimising the risk to retailers. The options considered included:

- establishing vesting contracts to cover electricity bought and sold for regulated customers. This option was not supported because it is not market-based and could influence market development;
- requiring standard retailers to buy electricity for regulated customers on behalf of the Government. This option was not supported because of the risks to Government of gaming. The standard retailers would have a strong incentive to allocate their most expensive contracts to regulated customers with the Government bearing any losses if the costs of these contracts exceed the regulated revenues earned by the retailers. This would

also create the possibility of the least expensive contracts being used by the retailer to dominate the competitive market;

- Market-based processes based on either periodic central auctions for hedging contracts to underpin the electricity purchasing costs for regulated customers; auctions of the right to supply the regulated customer load for a fixed price; or the Government buying electricity from the competitive pool and paying the standard retailers a (small) margin for providing billing and other services to regulated customers (the ETEF).

The first two options were not supported because of the complexity and associated costs of the arrangements, particularly as there was another auction (the NEM wholesale pool) already available. The Government concluded that ETEF was the least distortionary and most viable option amongst the alternatives available.

The Government's assessment has confirmed that ETEF is the most transparent, market-based instrument available for minimising the risks retailers face in supplying regulated contracts as:

- ETEF does not alter the pool price. Generators and retailers still bid into the NEM for the electricity supplied to regulated customers. ETEF acts as a settlement tool outside this framework and therefore does not distort price; and
- ETEF also does not require Government intervention in the operation of the businesses.

The effect of ETEF on energy trading

There is no evidence that the operation of ETEF has reduced energy related financial market trading activity.

Australian Financial Markets Association (AFMA) data shows that New South Wales has thirteen parties trading in its forward electricity prices compared with twelve in Victoria, eight in Queensland and six in South Australia. This demonstrates that there is an active market in New South Wales. Furthermore, the forward electricity prices in New South Wales for both peak and off-peak lie within the bounds set in other regions of the NEM. The operation of ETEF is not resulting in the distortion of prices. AFMA statistics on over-the-counter electricity contracts with New South Wales retailer counterparties also dispel the notion that it is more difficult to contract with New South Wales retailers because a proportion of their load is covered by ETEF.

The proportion of load covered by ETEF is declining. When ETEF commenced in 2001, 38 percent of the New South Wales load was covered by ETEF. In 2003, the proportion of New South Wales load covered by ETEF was 30 per cent. The Victorian Supreme Court recently found that the NEM should be viewed as a whole rather than as separate regions*. If viewed as a whole, the proportion of load covered by ETEF has fallen from 15 per cent in 2001 to 12 per cent in 2003.

The effect of ETEF on New South Wales generators is limited because they are only required to contribute to ETEF when the pool price is above the regulated energy cost and there are insufficient funds in ETEF to pay retailers the price difference with respect to the volume of electricity sold under regulated tariffs. New South Wales generators have not made contributions to ETEF since July 2002.

* *Murraylink Transmission Company Pty Ltd v National Electricity Market Management Company Ltd & Ors* [2003] VSC 265 (24 July 2003)

14.2 Gas

New South Wales adopted the draft gas quality standard specifications in the Gas Supply (General) Regulation 1997 in 2001, and transferred the specifications to the Gas Supply (Network Safety Management) Regulation 2002 in September 2002.

The Australian Standard for general purpose natural gas was published on 24 January 2003. The gas specifications are identical to the specifications contained in the New South Wales Regulation. The New South Wales Regulation will be amended to reference the Australian Standard later this year.

14.3 Petroleum

For the 2004 Assessment, the NCC has sought advice on progress in implementing amendments to the *Petroleum (Submerged Lands) Act 1982*, following the introduction of the Commonwealth *Petroleum (Submerged Lands) Amendment Act 2003* in September 2003.

New South Wales understands that further amendments to the Commonwealth Petroleum (Submerged Lands) legislation will be proposed in 2004. Given the need for New South Wales to mirror Commonwealth legislation, the Government will amend the New South Wales Act following the completion of all required amendments by the Commonwealth in 2004.

Attachment 1: Significant NSW General Government sector agencies required to implement pricing principles

No.	Government Purpose (ABS) ¹	Government Agency/Activity	GGE (ABS) ²	Treasury Monitor ³	User ⁴ Charges	Sig ⁵	Min ⁶
(01) General Public Services							
1		Audit Office of NSW	✓	✓	✓	✓	
2		Cabinet Office	✓	✓			
3		Community Relations Commission	✓	✓	✓	✓	
4		Independent Commission Against Corruption	✓	✓	✓		✓
5		Legislature	✓	✓	✓		✓
6		Local Government, Dept of	✓	✓	✓		✓
7		Ombudsman's Office	✓	✓	✓		✓
8		Parliamentary Counsel's Office	✓	✓	✓		✓
9		Premier's Department	✓	✓	✓		✓
10		Public Trustee	✓	✓	✓	✓	
11		Registry of Births, Deaths and Marriages	✓	✓	✓	✓	
12		State Electoral Office	✓	✓	✓		✓
13		State Records	✓	✓	✓	✓	
14		Treasury	✓	✓	✓	✓	
(03) Public Order & Safety							
15		Attorney General's Dept	✓	✓	✓	✓	
16		Corrective Services, Dept of	✓	✓	✓	✓	
17		Crime Commission, NSW	✓	✓	✓		✓
18		Director of Public Prosecutions, Office of	✓	✓	✓		✓
19		Fire Brigades, NSW	✓	✓	✓	✓	
20		Judicial Commission of NSW	✓	✓	✓		✓
21		Juvenile Justice, Dept of	✓	✓	✓		✓
22		Legal Aid Commission	✓	✓	✓	✓	
23		Police Integrity Commission	✓	✓			
24		Police, Ministry for	✓	✓	✓		✓
25		Police, NSW	✓	✓	✓	✓	
26		Rural Fire Service	✓	✓	✓		✓
27		State Emergency Service	✓	✓	✓		✓
(04) Education							
28		Board of Studies, Office of the	✓	✓	✓	✓	
29		Department of Education and Training	✓	✓	✓	✓	
(05) Health							
30		Health Care Complaints Commission	✓	✓	✓		✓
31		Health, Dept of	✓	✓	✓	✓	
(06) Social Security & Welfare							
32		Aboriginal Affairs, Dept of	✓	✓			
33		Ageing, Disability and Homecare, Dept of	✓	✓	✓	✓	
34		Commission for Children and Young People	✓	✓	✓		✓
35		Community Services, Dept of	✓	✓	✓		✓
36		Home Care Service	✓	✓	✓	✓	
37		Office of the Children's Guardian	✓	✓			
38		Rental Bond Board	✓	✓			
39		Women, Dept for	✓	✓			
(07) Housing & Community Amenities							

40	Aboriginal Housing Office	✓	✓	✓	✓	
41	Honeysuckle Development Corporation	✓	✓	✓	✓	
42	Home Purchase Assistance Fund	✓	✓	✓		✓
43	Infrastructure, Planning and Natural Resources, - Dept of	✓	✓	✓	✓	
44	Lands, Dept of	✓	✓	✓	✓	

No.	Government Purpose (ABS) ¹	Government Agency/Activity	GGE (ABS) ²	Treasury Monitor ³	User ⁴ Charges	Sig ⁵	Min ⁶
(08) Recreation & Culture							
45		Art Gallery of NSW	✓	✓	✓	✓	
46		Arts, Ministry for the	✓	✓	✓		✓
47		Australian Museum	✓	✓	✓	✓	
48		Casino Control Authority	✓	✓	✓		✓
49		Centennial Park and Moore Park Trust	✓	✓	✓	✓	
50		Environment and Conservation, Dept of	✓	✓	✓	✓	
51		Film and Television Office, NSW	✓	✓	✓		✓
52		Gaming and Racing, Dept of	✓	✓	✓	✓	
53		Heritage Office	✓	✓	✓		✓
54		Historic Houses Trust of NSW	✓	✓	✓	✓	
55		Luna Park Reserve Trust	✓	✓	✓		✓
56		Museum of Applied Arts and Sciences	✓	✓	✓	✓	
57		State Library of NSW	✓	✓	✓	✓	
58		State Sports Centre Trust	✓	✓	✓	✓	
59		Sydney Entertainment Centre	✓		✓		✓
60		Sydney Olympic Park Authority	✓	✓	✓	✓	
(09) Fuel & Energy							
61		Coal Compensation Board	✓	✓	✓		✓
62		Electricity Tariff Equalisation Ministerial Corp.	✓	✓			
63		Energy, Utilities and Sustainability, Dept of	✓	✓	✓		✓
64		Mineral Resources, Dept of	✓	✓	✓	✓	
65		Sustainable Energy Development Authority	✓	✓	✓		✓
(10) Agriculture, Forestry, Fishing & Hunting							
66		Agriculture, Dept of	✓	✓	✓	✓	
67		Fisheries, NSW	✓	✓	✓	✓	
68		Rural Assistance Authority	✓	✓			
69		Safe Food Production NSW	✓	✓	✓	✓	
(11) Mining, Mineral Resources, Manufacturing & Construction							
70		Building & Construction Industry - Long Service Payments Corporation	✓	✓			
(12) Transport & Communications							
71		Motor Accidents Authority	✓	✓			
72		Independent Transport Safety and Reliability Regulator	✓	✓			

73	Roads and Traffic Authority	✓	✓	✓	✓	
74	Transport, Ministry of	✓	✓	✓	✓	
75	Waterways Authority	✓	✓	✓	✓	
(13) Other Economic Affairs						
76	Commerce, Dept of	✓	✓	✓	✓	
77	Independent Pricing & Regulatory Tribunal	✓	✓	✓		✓
78	Insurance Ministerial Corporation	✓	✓	✓	✓	
79	Land and Property Information NSW	✓	✓	✓	✓	
80	State and Regional Development, Dept of	✓	✓	✓		✓
81	Superannuation Administration Corporation	✓	✓	✓	✓	
82	Tourism, Sport and Recreation, Dept of	✓	✓	✓	✓	
83	WorkCover Authority	✓	✓	✓	✓	
84	Worker's Compensation (Dust Diseases) Board	✓	✓	✓		✓
(14) Other Purposes						
85	Crown Property Portfolio	✓	✓	✓	✓	
86	Crown Finance Entity	✓	✓	✓	✓	

Key to Attachment 1:

- 1 Categories as per the Australian Bureau of Statistics (ABS) in *Standard Economic Sector Classifications of Australia (SESCA) 1998*.
- 2 General Government Enterprises (GGEs) as defined by the ABS in *GFS Australia: Concepts, Sources and Methods*.
- 3 These agencies/activities are monitored by Treasury on the basis of a risk and materiality assessment.
- 4 A user charge is a voluntary payment by a consumer to a PTE or a general government entity for services provided. Payment is commercial rather than regulatory and provides an identifiable benefit to the payer. (ABS: *GFS Australia: Concepts, Sources and Methods*). The existence of user charges is a broad indicator of a business activity.
- 5 Significant > \$2 million user charges revenue p.a. (as based on 2003–2004 Budget estimates).
- 6 Minor < \$2 million user charges revenue p.a. (as based on 2003–2004 Budget estimates).

Attachment 2: NSW Government Business Enterprises that have been or are intended to be corporatised or privatised

No.	Industry	Government Business Enterprise	ABS PTE ¹	Treasury Monitoring ²	Category ³	Already		Date Priv'n(P)/Corp'n	Comments
						Priv'n	Corp'n		
Electricity									
1		Australian Inland	√	√	1		√	1/3/96	Absorbed Broken Hill Water Board
2		Country Energy	√	√	1		√	1/7/01	Merger of former Advance Energy, Great Southern Energy and NorthPower.
3		Delta Electricity			1			1/3/96	
4		Energy Australia		√	1		√	1/3/96	
5		Eraring Energy	√		1			2/8/00	Formerly part of Pacific Power
6		Integral Energy	√	√	1		√	1/3/96	
7		Macquarie Generation		√	1		√	1/3/96	
8		Pacific Power International	√	√			√	2/7/03(P)	Former subsidiary of Pacific Power
9		Power Coal Pty Ltd	√	√		√		29/07/02(P)	Former subsidiary of Pacific Power
10		Snowy Hydro Limited	√		3			28/06/02	Jointly owned with Victoria and the Commonwealth.
11		TransGrid	√	√	1	√		14/12/98	
			√	√			√		
			√	√			√		

No.	Industry	Government Business Enterprise	ABS PTE ¹	Treasury Monitoring ²	Category ³	Already Priv'n Corp'n	Date Priv'n(P)/Corp'n	Comments
Finance								
12		Axiom Funds Management Corporation			3	√	16/5/97(P)	
13		Government Insurance Office (GIO)	PFE	√	4	√	16/7/92(P)	
14		NSW Treasury Corporation (TCorp)		√	1		1983	
15		State Bank of NSW		√	4	√	31/12/94(P)	
Gaming & Recreation								
16		NSW Lotteries	√	√	1	√	1/1/97	
17		Totalizator Agency Board of NSW (TAB)	√	√	4	√	6/98(P)	
Ports & Waterways								
18		Newcastle Port Corporation	√	√	1	√	1/7/95	
19		Port Kembla Port Corporation	√	√	1	√	1/7/95	
20		Sydney Ports Corporation	√	√	1	√	1/7/95	

No.	Industry	Government Business Enterprise	ABS PTE ¹	Treasury Monitoring ²	Category ³	Already Priv'n Corp'n	Date Priv'n(P)/Corp'n	Comments
Transport								
21		Freight Rail Corporation	√	√	4	√	21/2/02(P)	Sold in conjunction with sale of NRC Merger of Rail Infrastructure Corporation and State Rail Authority.
22		RailCorp	√	√	1		1/1/04	
23		Sydney Ferries	√	√				
Water								
24		Coleambally Irrigation	√			√	9/6/00(P)	Currently part of the Department of Energy, Utilities and Sustainability. Corporatisation target date 1 July 2004
25		Hunter Water Corporation	√	√	1		1/1/92	
26		Jemalong Irrigation	√				03/95(P)	
27		Western Murray Irrigation	√			√	23/02/95(P)	
28		Murray Irrigation	√			√	3/3/95(P)	
29		Murrumbidgee Irrigation	√		1	√	12/2/99(P)	
30		State Water	√			√		
			√	√				
31		Sydney Water Corporation		√	1		1/1/95	
			√	√		√		

No.	Industry	Government Business Enterprise	ABS PTE ¹	Treasury Monitoring ²	Category ³	Already Priv'n Corp'n	Date Priv'n(P)/Corp'n	Comments
		Misc						
32		First Australian National Mortgage Acceptance		√	5	√	31/10/94(P)	NSW Gov 25% shareholder only
33		Fish Marketing Authority			3		31/10/94(P)	
34		Jenolan Caves Reserve Trust	√		3	√		Advisory Board has been established.
35		State Forests of NSW	√	√	1			NSW Government is undertaking a scoping study regarding future private sector participation in State Forests' plantation operations.
36		Landcom			1		1/1/02	
37		Superannuation Administration Corporation			1		26/7/99	
38		Sydney Market Authority	√	√		√	1/11/97(P)	
39		Waste Recycling and Processing Corporation	√	√	1		1/9/01	
			√			√		

Key to Attachment 2:

- ¹ Public Trading Enterprises (PTEs) and Public Financial Enterprises (PFEs) as defined by the Australian Bureau of Statistics (ABS) in *Standard Economic Sector Classifications of Australia (SESCA) 1998*.
- ² GBEs monitored by Treasury on a quarterly or half-yearly basis are within the Commercial Policy Framework (CPF).
- ³ On the basis of a risk and materiality assessment, Treasury has identified five financial monitoring programs. These are categorised as follows:
- (1) Quarterly reporting and monitoring for:
 - all State Owned Corporations (SOCs);
 - all dividend paying GBEs;
 - those GBEs which are assessed as having the potential in the medium term to become dividend paying; and
 - high risk/materiality GBEs.
 - (2) Half-yearly monitoring for GBEs in the medium risk/materiality category.
 - (3) Portfolio monitoring exclusively by the relevant Minister, with relatively low risk exhibited.
 - (4) Post-privatisation monitoring for GBEs that are no longer owned by the Government. As the Government may bear ongoing financial risks, these require identification and management. Frequency of monitoring will vary depending upon circumstances of sale and the right of the Government to access information. Major privatised GBEs are to be reviewed at least on a quarterly basis.
 - (5) Businesses where the State has a minority interest as a shareholder are monitored quarterly, assuming that the shareholding is material and/or the business is exposed to particular trading/operating risks.