



NATIONAL COMPETITION POLICY

Progress Report:

*Implementing National
Competition Policy in
Western Australia*

REPORT TO THE
NATIONAL COMPETITION COUNCIL

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1. INTRODUCTION

This report provides a stock-take of National Competition Policy reforms by Western Australia as at 31 December 2000, and accordingly reflects the policy decisions and progress of the previous Western Australia Government. The current Western Australian Government does not necessarily accept all the policy positions of the previous Government.

Nevertheless, Western Australia will continue to pursue National Competition Policy (NCP) reforms, where these are found to be in the public interest.

A major emphasis of this government will be on ensuring that public interest drives reform. The Government considers that properly conducted reviews and public interest tests, which take into account a wide range of economic, social and environmental considerations are crucial to the successful implementation of NCP.

This Report

Since Western Australia's second tranche assessment in 1999, progress has been made in all areas of NCP. Major reforms have included improving allocation and pricing systems for water, introducing harmonised road transport laws and establishing independent regulators of rail and gas access.

The legislation review program is substantial, and good progress continues to be made. With 175 reviews now completed, approximately half have recommended legislative amendment in the public interest. A competition policy omnibus Bill to implement reforms arising from reviews was prepared and introduced into Parliament by the previous Government, and a second Bill is under preparation.

Work remains to be done in a number of areas, such as completing the outstanding legislation reviews and implementing those reforms found to be in the public interest.

The report is written as a response to the NCC's publication of February 2001, "NCP - Third Tranche Assessment Framework", but is also designed to be accessible to other interested readers.

2. LEGISLATION REVIEW

Western Australia continues to make strong progress in reviewing and, where appropriate, reforming legislation that restricts competition. The program is on track for completion before 30 June 2002. All reviews are being undertaken in accordance with the Competition Principles Agreement (CPA), and Western Australia's Clause 5 Legislation Review Table and Legislation Review Guidelines.

Many reviews have recommended that legislation be reformed by removing those restrictions on competition found not to be in the public interest. Equally importantly, rigorous analysis has established that there are good public interest reasons for retaining many restrictions.

2.1 Progress with Legislation Review and Reform

2.1.1 Review Program

Western Australia has made substantial progress implementing its legislation review program.

At the time of the second tranche assessment report to the National Competition Council (NCC), Western Australia had completed 78 reviews. Since that time a further 97 reviews have been approved by the previous Government, bringing to 175 the total number of completed reviews.

Following further consideration, 17 pieces of legislation have been determined not to require review at this stage, in most cases because the legislation is proposed for repeal. Such laws, however, will remain listed for review on the State's legislation review database, until they are repealed or Cabinet formally determines that review is not needed.

Progress with individual legislation reviews is described in Attachment 1, which sets out an updated list of completed reviews, and Attachment 2, dealing with reviews yet to be completed.

2.1.2 Reform Implementation

Western Australia has to date passed 19 amendments to legislation arising from recommendations of competition policy reviews. Legislative amendments have been recommended for a further 66 of the completed reviews.

Treasury is coordinating omnibus competition policy legislation as a central mechanism for implementing legislative reforms recommended by clause 5

legislation reviews and clause 3 competitive neutrality reviews. At the time of this report, two omnibus bills are at different stages:

- The *Acts Amendment and Repeal (Competition Policy) Bill 2000* was introduced into Parliament by the previous Treasurer in May 2000. The Bill repeals 2 laws and amends a further 11 laws. Due to the previous Government's sizeable legislative program and the calling of the election, the Bill remained before Parliament at the time Parliament was dissolved in January 2001. It is expected that the Bill will be reintroduced as a high priority.
- The drafting of a second omnibus bill has commenced. This is provisionally titled *Acts Amendment (Competition Policy) Bill 2001*. At the time of finalising this report, drafting instructions have been prepared to effect amendments to a further 11 Acts. It is expected that the Bill will be completed for introduction into Parliament in the Spring session of 2001.

At the same time, many reforms are being implemented separately to this process. This is likely to be the case where:

- the reforms to a sector are sufficiently substantial to warrant preparation of a specific Bill; or
- the reforms fit with other non-NCP legislative amendments being made in any case.

The reports of completed reviews in **Attachment 1** indicate where reform has been endorsed by the previous Government, and the proposed method of implementing the reform, including where a reform is proposed to be made through an omnibus Bill.

2.2 Legislation Review Outcomes

Since Western Australia submitted its report for the second tranche assessment in 1999, around half the reviews completed have recommended reform that has been agreed to by the previous Government. Furthermore, a number of measures have been taken to advance the program of implementing reforms arising from completed reviews.

Major outcomes of the legislation review and reform program include the following:

- New laws were passed implementing structural reform to the State's forest management, based on NCP principles. The *Forest Products Act 2000* and *Conservation and Land Management Amendment Act 2000* separate regulatory functions from service delivery functions within forest management, and

apply competitive neutrality measures such as tax equivalents to the new commercial agency, the Forest Products Commission. An independent NCP review found the reforms to be pro-competitive.

- In 1998, the Western Australian Government agreed with the review findings that a net public benefit would be achieved by deregulating the single desk marketing arrangements for the export lamb industry. This occurred in June 2000, when legislation repealing the *Marketing of Meat Act 1946 and Regulations* came into force. The Western Australian Meat Marketing Corporation (WAMMCO) was re-constituted as a grower cooperative with about \$6 million in funding being provided by the Government to allow for the transition.
- Western Australia deregulated its dairy industry on 30 June 2000 with the passing of the *Dairy Industry and Herd Improvement Legislation Repeal Bill 2000*. The Bill not only repealed the market milk quota system, but also:
 - enabled Western Australia's dairy industry to qualify for the Commonwealth's structural adjustment assistance package of \$110 million for milk quota holders and manufacturing milk producers;
 - directly provided industry development support valued at \$36 million from the State Government; and
 - privatised and changed the of role of the Dairy Industry Authority and Herd Improvement Service of Western Australia.
- Port authorities have undergone significant competitive reform with the passage of the *Port Authorities Act 1998*, which replaced several individual port authority Acts. Port authorities were commercialised and became subject to local government rate equivalents and all state taxes. Furthermore, exclusive licensing provisions for port services, such as port towage and pilotage, can only occur where the Minister considers the public benefits of such exclusivity outweigh the public costs.
- The review of the *Artificial Breeding of Stock Act 1965 and Regulations* found that the restriction limiting who could operate as an artificial breeder was not in the public interest and it was recommended that this restriction be repealed. The previous Government also agreed to the review's recommendations to include less restrictive regulations on the control of diseases, remove restrictions on premises and imports of genetic material and provide a mechanism for voluntary licensing of artificial breeders.
- The review of the *Motor Vehicle (Third Party Insurance) Act 1943* found that the Insurance Commission's statutory monopoly right to provide compulsory third party insurance was a restriction on competition. The

previous Government endorsed amendment of the Act to remove the monopoly provision, subject to any system change requiring further approval of Parliament.

- The review of the *Transport Co-ordination Act 1966* and subordinate legislation was completed in November 2000 and resulted in a number of significant reform proposals being endorsed by the previous Government, including:
 - removal of provisions relating to the licensing of ships engaged in coastal trade;
 - removing requirements for public vehicles (other than ships) to be licensed; and
 - limiting licence fees to an amount sufficient to recover costs incurred in administering the relevant licence system and associated regulatory activities.

Furthermore, the previous Government endorsed the recommendation that intra-state licence fees for aircraft be removed. This reform is to be phased in over a period of two years, saving the domestic airline industry about \$3.5 million per year.

- The legislation review of the *Gaming Commission Act 1987* found that the existing regulatory regime lacks flexibility because it does not provide the Government with a mechanism to choose a supplier of State lottery products other than the Lotteries Commission. Further, the existing regime places no competitive pressure on the Lotteries Commission with respect to product pricing and operating costs.

A less restrictive regulatory framework within the Act has been recommended which allows the Minister to enter into State Agreements, ratified by Parliament, for the licensing of State lottery suppliers other than the Lotteries Commission, if this is considered by the Government to be in the public interest.

- The review of the *Racing Restriction Act 1927* found that the Act, intended to prevent gambling on greyhounds using a mechanical lure, was so broadly drafted that it also prevented harmless social or hobby racing. As both greyhound racing and gambling are now controlled by other laws, this Act was recommended for repeal.
- The review of the *Gold Corporation Act 1987* recommended the removal of the advantages enjoyed by Gold Corporation and its subsidiaries over other businesses operating in precious metals markets.

- The *Carnarvon Banana Industry (Compensation Trust Fund) Act 1961* was repealed in June 2000, removing the requirement for growers to compulsorily insure against crop losses.

2.3 New Legislation

In accordance with clause 5(5) of the Competition Principles Agreement, Western Australia assesses all new legislation to determine whether it contains restrictions on competition and if so, reviews it accordingly. Treasury's Legislation Review Guidelines have been distributed widely and include a chapter on the requirements for identifying and reviewing restrictions contained in new legislation.

Preparation of new Western Australian laws takes place in an environment where there is a high degree of awareness of competition policy principles and the State's obligations under clause 5. As part of the whole of Government commitment to NCP, the Treasurer has corresponded regularly with Ministers about the State's ongoing NCP obligations. Treasury likewise corresponds regularly on NCP matters with Departmental CEOs and Ministerial Chiefs of Staff.

2.3.1 Gate-Keeping Process for New Legislation

Western Australia has in place an effective process for ensuring that all new legislation that may restrict competition is reviewed.

Treasury advises agencies on the State's obligations to consider all new legislation to see whether it restricts competition and to review the law where this is the case. Treasury has close links with the policy and legislation section of each agency and, through regular discussion, correspondence, meetings and presentations, encourages consideration of NCP at an early stage in preparation of all new legislation.

Agencies keep Treasury informed about proposals for new legislation from early in the process and can seek Treasury input on particular restrictions.

As a check on the above, the State's legislative process also incorporates mechanisms by which Treasury is formally informed of progress on new legislation:

- Treasury receives from the Cabinet Office a copy of all submissions to be put to Cabinet concerning proposed new laws, at least ten days prior to the Cabinet meeting; and

- Treasury receives regular reports from the database maintained by Parliamentary Counsel's Office of all new laws approved for drafting by Cabinet.

Where Treasury considers that a proposed new law has the potential to restrict competition, it liaises with the proponent agency or Ministerial Office to ensure that a review is conducted and to advise on the scope and scale of the review. Treasury's advice is normally accepted. Where it is not, Treasury has the opportunity to put its advice to Cabinet.

The process and method for conducting and implementing reviews of new legislation are the same as for existing legislation and are detailed in Western Australia's Legislation Review Guidelines.

2.3.2 Progress with Review of New Legislation

Since 1996, the gate-keeping process has identified 65 proposals for new laws as containing potential restrictions on competition that could require review. Of these, 20 reviews have been completed and endorsed by the previous Government. The remaining proposals (for which reviews have not been completed) either have not proceeded, are at an early stage of preparation, or were assessed before going to Cabinet as not requiring clause 5 review.

The majority of the reviews have not recommended amendment to the new laws under review, many also finding that a new law has a significant pro-competitive impact. This appears to reflect the effectiveness of communication with agencies promoting consideration of NCP principles in developing proposals for new laws.

The list of completed reviews of new legislation is set out in **Attachment 3**.

2.4 Matters Raised in Assessment Framework

The NCP Third Tranche Assessment Framework raised areas of particular interest to the NCC for assessment. The following sections address the legislation review areas of particular interest. In all cases where the legislation review process is still under way, Western Australia will ensure that the process is finalised and any recommended changes are implemented before the deadline of 30 June 2002.

The following includes additional information requested by the NCC in its Third Tranche Assessment Framework.

2.4.1 Taxi Services

Western Australia is committed to undertaking appropriate regulatory reform of the State's taxi industry. A number of significant reforms have already been implemented, and the new Government is considering further reform.

Western Australia has conducted its legislation review of the *Taxi Act 1994* and, as a result of the review, is implementing a package of reforms that have been designed to meet the needs of the wider community and improve the efficiency of the industry. The reforms include:

- lessening Government regulation of the industry, by removing restrictions such as the minimum period of taxi operation and times of compulsory operation;
- reducing the impact of the restriction on taxi plate numbers through putting out to tender an additional 25 multipurpose and 100 peak period taxi plates;
- establishing an independent Reform Review Group to drive the implementation of the reforms and to advise the Minister on whether further reform is needed in the public interest;
- defining and monitoring taxi companies' performance standards including telephone waiting time, time elapsed from phone call to taxi arrival, the number of jobs not covered and the handling of complaints, directly addressed the primary concerns expressed in the review by consumers; and
- improving the education and training of drivers and introducing other initiatives to lift driver performance in line with consumer expectations identified in the review.

The Steering Committee which conducted the review for the previous Minister for Transport commissioned the following two consultancies:

- a survey of public opinion on the industry and what aspects of it need improvement by the Boshe Group; and
- a review of the *Taxi Act 1994* by BSD Consulting.

Both of these consultancies influenced the Steering Committee's report and recommendations, which were accepted by the previous Government.

The opinion survey provided an indication of public expectations about taxi industry performance and resulted in the emphasis on performance standards and driver performance in the package of reforms.

The previous Government accepted and implemented most of the recommendations of the BSD legislation review which include:

- retaining a cap on retail fares;
- removing the restriction on negotiating fares by telephone but retain them for the rank and hail markets;
- introducing a comprehensive driver training regime;
- removing the requirement to inform the Taxi Dispatch Service of the driver's whereabouts;
- removing restrictions on lease fees charged by plate holders;
- retaining restrictions requiring plate owners to be 'fit and proper' persons;
- retaining record keeping requirements;
- retaining Taxi User Subsidy Scheme vouchers so that government can continue to subsidise fares of disabled people; and
- maintaining and even improving the existing safety standards.

The major recommendation by BSD Consulting that was not supported by the previous Government was the buy-back of taxi plates and the deregulation of plate numbers. The previous Government agreed not to proceed with a buy-back of taxi plates and taxi number deregulation at that time.

While the new Government does not support wholesale deregulation, it recognises there is a public interest case for a buy-back of taxi plates.

The plate buy-back would offer the opportunity to reduce the high cost structures in the industry and reduce driver lease fees. A Ministerial Task Force will be established to look in detail at the feasibility of a plate buy-back and develop an approach that is fair to taxi plate owners and provides benefits to taxi drivers and taxi customers.

2.4.2 Other Transport Services

The Western Australian Government controls essential marine transport infrastructure through its ownership of regional and metropolitan port authorities. The State Government's role in air transport is limited to its control of licensing provisions within the *Transport Coordination Act 1966* and

Regulations, with airports being owned by the Federal Government or by local governments. This section addresses issues raised by the NCC in its NCP Third Tranche Assessment Framework that fall within the jurisdiction of the Government of Western Australia.

Western Australia is committed to ensuring a competitive and efficient ports system is in place. The previous Government implemented competition reforms through repealing the eight Acts governing Western Australia's major ports and replacing them with a less restrictive single Act, the *Port Authorities Act 1998*.

As part of the reform, port authorities were commercialised and became subject to local government rate equivalents and all state taxes. Furthermore, exclusive licensing provisions for port services, such as port towage and pilotage, can only occur where the Minister considers the public benefits of such exclusivity outweigh the public costs.

The legislation review of the new Act identified six restrictions to be retained in the public interest which were:

- exemption from planning and building requirements;
- public sector management provisions;
- accountability provisions;
- ministerial approval, consultation and borrowing limit provisions;
- pilotage provisions; and
- licensing provisions with safeguards where exclusive licensing arrangements exist.

Several Acts governing maritime activity will be repealed by the new Maritime Bill. A legislation review report has been drafted but has yet to be considered by the Minister or Cabinet. The Bill is likely to be introduced into the new Parliament in 2001.

The review of the *Transport Co-ordination Act 1966* and subordinate legislation was completed in November 2000 and resulted in a number of significant reform proposals being endorsed by the previous Government, including:

- removing provisions relating to the licensing of ships engaged in coastal trade;
- removing the general requirement for public vehicles to be licensed unless subject to an exemption under the Act ;

- removing the general requirement for public vehicles to be licensed unless required in specific circumstances where there is a consequent public benefit to the regulation of transport services; and
- limiting licence fees to an amount sufficient to recover costs incurred in administering the relevant licence system and associated regulatory activities.

Furthermore, the previous Government endorsed the recommendation that intra-state aviation licence fees be removed. This reform is to be phased in over a period of two years and it will save the domestic airline industry about \$3.5 million per year.

2.4.3 Agriculture and Related Activities

Western Australia is committed to reforming primary industry legislation where this is in the public interest and has introduced significant agricultural reforms including the removal of statutory marketing powers for lamb export, milk production and dried fruits marketing.

Significant structural reform has also been achieved in the regulation of the State's forestry business and conservation estate, with the establishment of the Forest Products Commission as a commercialised forestry agency.

Reviews in the fisheries sector have been completed and are being considered by Government.

Agriculture

The previous Government agreed that licensing provisions for artificial breeders contained in the *Artificial Breeding of Stock Act 1965* and Regulations be repealed along with restrictions on the specification of premises and unnecessary restrictions on the importation of genetic material.

The previous Government also agreed to remove restrictions on standards of grading and packing fruit and other agricultural produce from the *Agricultural Products Act 1929* and Regulations. The *Carnarvon Banana Industry (Compensation Trust Fund) Act 1961*, which served as a compulsory crop insurance scheme for banana growers, have been repealed.

The previous Government endorsed the recommendation that provisions within the *Seeds Act 1981* and Regulations be repealed subject to the endorsement of national standards for seed quality.

Reviews remaining to be completed include the marketing arrangements of grains, potatoes and eggs.

Review of the *Dairy Industry Act 1973* indicated that a net public benefit would arise from repeal of the law, if deregulation of the dairy industry were to proceed in Victoria.

The dairy industry was deregulated on 30 June 2000 following passage of the *Dairy Industry and Herd Improvement Legislation Repeal Bill 2000*. The Bill resulted in:

- the repeal of the market milk quota system;
- the Commonwealth's structural adjustment assistance package of \$110 million becoming available to milk quota holders and manufacturing milk producers;
- the provision of industry support valued at \$36 million from the State Government for the development of value added opportunities and business planning services;
- the privatisation and change of role of the Dairy Industry Authority; and
- the privatisation of the Herd Improvement Service of Western Australia.

Western Australia's *Marketing of Wheat Act 1989* was enacted to give effect to the Commonwealth's wheat marketing legislation as it stood before recent amendments. The Commonwealth has recently completed its review of the Commonwealth Act, as amended. Western Australia can now finalise its review in view of the outcome of the Commonwealth's review.

The review of the *Chicken Meat Industry Act 1977* recommended that the legislation be amended to allow growers to negotiate contracts with processors outside of the existing compulsory collective contract system, as well as removing other restrictions. The Act will continue to provide a "model" contract for optional use and a dispute resolution mechanism where the model is adopted.

The national review of agricultural and veterinary chemicals legislation, which is nearing completion, has been supported by Western Australia through the Standing Committee on Agriculture and Resource Management (SCARM) process.

The review process for the *Veterinary Surgeons Act 1960* is still underway.

Fisheries

Fisheries legislation review reports have been completed and are before Government for consideration.

The review outcomes consist of a package of six reports including reports specifically relating to:

- restrictions on the rock lobster processing sector in Western Australia applied under the *Fish Resources Management Act 1994* (FRMA);
- controls in the pearling industry exercised under the *Pearling Act 1990* and Regulations; and
- restrictions applying to commercial and recreational fishers and the aquaculture sector applying under the FRMA.

This report also includes comment on the *Fisheries Adjustment Schemes Act 1987* and the yet unused *Fishing Industry Promotion Training and Management Levy Act 1994*.

Independent consultants ACIL and CIE reviewed the legislative restrictions applying to the rock lobster processing sector and the pearling industry respectively. CIE also reviewed the Fisheries Department review of the restrictions applying under the FRMA. As part of the review process, draft review papers in each of these three areas were released for public comment.

Government is now considering the review reports' findings.

Forestry

Two Acts implementing major reforms to the regulatory and business environment for State forestry were passed during 2000. These reforms restructured the Department of Conservation and Land Management (CALM) as follows.

- The *Forest Products Act 2000* established the Forest Products Commission (FPC) as the State's commercialised timber agency, removing commercial functions from CALM. The FPC is subject to standard provisions applying to the State's Government Trading Enterprises. The standard provisions include having a primarily commercial purpose, preparing for the Treasurer's endorsement a Strategic Development Plan and Statement of Corporate Intent, being subject to duties, taxes and other imposts, payment of dividends to Consolidated Fund and so on.
- The *Conservation and Land Management Amendment Act 2000* established the Conservation Commission as the vesting body for public forest lands and gave it responsibility for preparing forest management plans and overseeing their implementation.

Application of NCP principles through these Bills has had a strong pro-competitive effect on the markets for forest products, by removing potential conflict of interest within government, and applying competitive neutrality measures to the FPC. The previous Government commissioned an independent consultant to conduct a legislation review of the Bills, but did not have the opportunity to consider the review before Parliament was dissolved in late 2000. The report is awaiting endorsement by the new Government.

The legislation review of the *Sandalwood Act 1929* recommended, and the previous Government endorsed, removal of the constraint on harvesting sandalwood from private land, while retaining an overall cap on the volume harvested, for reasons of sustainability and good management.

An independent reviewer has undertaken a report on the *Conservation and Land Management Act 1984*. Further assessment is required of the best method of regulating apiarists in the public interest, and the previous Minister sought further submissions on this aspect of the review, which will be considered by the new Minister.

2.4.4 Mining

Western Australia is committed to implementing NCP in the mining and resources sector, which are critical to the economic well-being of the State and needs to be internationally competitive.

Legislation review is the NCP commitment most relevant to the mining sector. Legislative restrictions relating to, for example, the environment, planning, safety and lease conditions may well be in the public interest, but there are strong incentives for the State to ensure that the laws imposing these safeguards are justified and fit for their intended purpose.

Complying with NCP principles is part of the State's broader goal of providing an effective, consistent and low-cost regulatory framework for the mining and resources sector in the State.

State Agreement Acts

Western Australia is committed to applying NCP principles to its use of State Agreement Acts as a mechanism for facilitating major projects in the State. Agreement Acts have been an instrument in the successful development of the State's vast mineral and energy resources, especially in remote regions, and have an added benefit of transparency and public scrutiny. These benefits and the sovereign risk of unilateral changes to Agreement Acts, have meant that retention of existing agreement Acts has been found to be in the public interest.

In respect of any future agreement Acts or amendments to existing Acts, the State's gate-keeping process for new legislation will ensure that NCP obligations are met.

Mining Laws

The State has reviewed or is reviewing a number of other laws in the mining and resources sector. Completed reviews are reported in **Attachment 1**, and uncompleted reviews in **Attachment 2**.

The previous Government endorsed the review of the *Gold Corporation Act 1987* and Regulations. The review was undertaken to meet both competitive neutrality and legislation review obligations. The review recommended amendments to the Act to remove advantages enjoyed by Gold Corporation and its subsidiaries over other businesses operating in precious metals markets.

The previous Government endorsed reviews of the *Explosives and Dangerous Goods Act 1961*; the *Mining Act 1978*; and the *Petroleum Pipelines Act 1969*; and all associated regulations. Significant reforms have already been implemented to the framework for classifying explosives and dangerous goods and transport-related matters. Further reforms relate to the handling and storage of explosives and dangerous goods and classification matters. A new Act is proposed with revised regulations to align the framework with that applying to other chemicals.

Reviews of the *Petroleum Act 1967* and *Petroleum (Submerged Lands) Act 1982* and regulations have been deferred pending completion of the national review of submerged lands legislation. A review of the *Coal Industry Superannuation Act 1989* and regulations has been deferred pending expected changes to the Commonwealth superannuation industry regulatory framework.

2.4.5 Health and Pharmaceutical Services

Western Australia is undertaking comprehensive reviews of legislation governing health laws, with particular focus on the health professions. Most of the reviews are at an advanced stage and it is expected that the process of reviewing and, where appropriate, reforming restrictions on competition will be completed by mid 2002.

The majority of the State's laws regulating the practices of health professionals are being jointly reviewed in a process covering twelve professions such as dentists, nurses, psychologists and osteopaths, each governed by its own Act. A substantial public consultation process has been carried out and a draft report is under consideration.

The Ministerial Working Group conducting the review of the *Medical Act 1894* made its initial report to the previous Minister for Health in October 1999. The report recommended the repeal and replacement of the Act as a whole. The Working Group since that time has been preparing a detailed proposal for the replacement law, and concurrently undertaking NCP review of the proposal, involving extensive consultation and public input including a seminar on the NCP review, and an invitation for submissions from interested parties and the general public.

The previous Government endorsed NCP reviews of a number of laws governing ethical matters such as reproductive technology, organ transplants and animal experimentation, as well as the mental health laws. Generally the reviews have found that the laws are based on ethical and social considerations, and any restrictions should be retained in the public interest.

Review of the *Pharmacy Act 1964* will not be finalised until the Wilkinson national review of pharmacy regulation, conducted for COAG, has been responded to. Similarly, reviews of laws relating to radiation safety and poisons are on hold pending finalisation of a national review.

2.4.6 Legal Services

Western Australia is taking the opportunity presented by the NCP process to consider in broad terms the approach currently taken by the State to regulating the legal profession. Review of the regulatory scheme applying to legal services raises matters of significant public interest, including protection of the public who may not be well informed about purchasing legal services, professional conduct and fiduciary standards, and practitioners' duty to the court. The task of seeking reform in an increasingly national market for legal services presents a challenge for jurisdictions.

Completed Legislation Reviews Affecting Legal Services

Western Australia has completed legislation reviews of several existing laws and proposed new laws that affect the provision of legal services.

The review of the *Administration Act 1903* recommended, and the previous Government endorsed, reforms to broaden the range of financial institutions able to pay funds from a deceased estate for funeral and similar purposes, and to make the maximum amount for such payments consistent with the Financial Institutions Code (WA).

The review of the *Law Reporting Act 1981* recommended, and the previous Government endorsed, replacing the requirement to obtain the consent of the Attorney General before publishing judicial decisions of State courts, by a

negative licensing system; and replacing the ten year contract for the publication of the Authorised Reports, by a widened tender process and a five year contract period.

An NCP review of a proposal to prepare legislation allowing incorporation of legal practices was endorsed by the previous government. The review found that the proposal was pro-competitive, and any remaining restrictions were in the public interest. Work on the proposal continues, but may not be implemented until other jurisdictions address this issue, due to the national character of the legal services market.

The previous Government also endorsed an NCP review of a proposal to introduce a new regime to govern enforcement of civil judgments. The regime would promote competition in the provision of judgment enforcement services, but retain restrictions needed to maintain the integrity of court processes and enforcement procedures.

NCP reviews have also been endorsed of the *Legal Aid Commission Act 1976*, *Legal Aid Commission (Amendment) Bill 2000*, *Magistrates Courts Bill*, *Magistrates Court (Consequential Provisions) Bill*, *Public Trustee Act 1941* and *Acts Amendment (Public Trustee and Trustee Companies) Bill* and *Suitors Fund Act 1964*.

Review of the Legal Practitioners Act 1893

The Attorney-General in February 2000 appointed a Steering Committee to conduct the review of this and related Acts. The Committee consists of the Solicitor General and senior public servants from Treasury and the Ministry of Justice.

The Committee has consulted broadly, through a number of avenues. A consultative group has been established, comprising key stakeholders drawn from the judiciary, the legal profession and academia. An Issues Paper and a condensed version thereof was released in June 2000. Information forums were made available and submissions were invited from interested parties, with appropriate notification provided through notices in *The West Australian* newspaper.

The review will be finalised in time for the State to implement any recommendations for reform prior to mid 2002.

2.4.7 Other Professional and Occupational Services

Western Australia has made substantial progress and is on schedule to fulfil its legislation review and implementation obligations in relation to a range of professional and occupational services:

- Artificial breeders;
- Inquiry Agents;
- Marine Stores Collectors and Dealers;
- Motor Vehicle Salesmen;
- Municipal Clerks; and
- Railway Porters.

A review of the professions related to the boxing industry recommended that restrictions are in the public interest and concluded that they should be retained.

The *Firearms Act 1973*, which registers firearm repairers, was removed from the review timetable in view of a national approach being taken to firearms policy.

Attachment 4 summarises the status of reviews of Western Australia's professional licensing in relation to the occupations addressed by the Vocational Education, Employment and Training Advisory Committee (VEETAC).

2.4.8 Fair Trading and Consumer Legislation

Western Australia's framework of fair trading and consumer protection laws continues to be developed in accord with NCP principles.

Western Australia recognises that there is a need for consumers and businesses to be protected against unfair commercial conduct in some circumstances. Circumstances where legislative protection is in the public interest include, for example, where consumers find it difficult to obtain full information about products and where there is a risk that a trader will take unfair advantage of this information asymmetry.

In keeping with NCP principles it is equally important that the laws to achieve such protection are clearly directed at the objective for which they are designed, and operate without imposing unnecessary restrictions on business activity. Such restrictions can add to transaction and compliance costs for business, which ultimately works against the best interests of both business and consumers.

Western Australia adopted the uniform national competition laws in the *Competition Policy Reform (Western Australia) Act 1996*. This law and the State's

general fair trading laws underpin consumer protection in the State, while more specific laws may also be in the public interest in particular sectors. NCP principles provide a good basis for considering what mix of laws is appropriate in this area. Western Australia's NCP reviews of hire purchase legislation and consumer credit legislation, for example, have identified a number of provisions that can be safely repealed without disadvantaging consumers, and these are in the process of being amended accordingly.

Consumer Credit Legislation

The previous Government endorsed the significant reforms recommended by the legislation review of the *Credit (Administration) Act 1984* in 1999. The major restriction identified was the Act's licensing requirement for credit providers, which forms the basis for a number of associated restrictions applying to licensed persons.

The public interest assessment of the Act found that the licensing requirement did not provide a net public benefit, particularly given the civil redress, civil and criminal penalty, disciplinary and injunctive provisions contained in other existing consumer protection legislation. Accordingly, the licensing requirement and the provisions flowing from it were recommended for deletion.

Substantial reform of the *Hire-Purchase Act 1959* was endorsed by the previous Government and is under way, following a rigorous legislation review. The review found that most of the provisions of the Act are no longer needed to achieve consumer protection for new hire-purchase transactions, since the enactment in 1996 of the national uniform Consumer Credit Code.

Only three provisions of the Act (relating to surplus from sale of goods, equitable relief and farm goods purchases) were found to be not adequately reproduced in the new Code and to be justified for retention in the public interest. These provisions will continue to apply to new transactions.

Fair Trading Legislation

The Ministry of Fair Trading will be undertaking a general review of both the *Fair Trading Act 1987* and the *Consumer Affairs Act 1971* in the second half of 2001 that will include a review of any restrictions on competition to ensure they are in the public interest.

The Ministry of Fair Trading is planning to introduce new legislation in 2001 that will replace the *Weights and Measures Act 1915*. The new legislation will replicate the uniform legislation operating in other jurisdictions and thereby contribute to national consistency. A preliminary NCP assessment was completed on an earlier draft of the new Bill but will need to be revisited once a final Bill has been prepared.

2.4.9 Insurance and Superannuation Services

Western Australia has made substantial progress in reviewing its finance, insurance and superannuation services legislation. The State is committed to ensuring competitive services in this key sector of the economy. An example of this commitment is demonstrated by the review report into third party motor vehicle insurance.

The previous Government endorsed the legislation review of the *Motor Vehicle (Third Party Insurance) Act 1943* in August 2000. The review found that restricting the provision of compulsory third party insurance to a single monopoly provider was a restriction on competition.

The review recommended the Act be amended to provide that the Minister may approve persons other than the Insurance Commission to issue policies of insurance for the purposes of the Act, subject to any system change requiring further approval of Parliament.

Other recommended reforms arising from the review include amending the Act to ensure that it is obligatory to insure vehicles owned by Government agencies; and removing the restriction on who can represent claimants and defendants in claims proceedings (subject to confirmation by NCP review of the *Legal Practitioners Act 1893*).

The legislation review of the *State Superannuation Act 2000* commenced in July 2000. The previous Government engaged an independent consultant to conduct the review and a draft review report is close to completion.

The legislation review of the *Workers' Compensation and Rehabilitation Act 1983* commenced in 1997 and was delayed while the inter-jurisdictional Committee of Regulatory Reform (CRR) considered undertaking a national review. The review process has since been re-activated and is to be completed and considered by Government in 2001.

2.4.10 Retail Trading Arrangements

Western Australia is in the final stages of reviewing legislation that regulates retail trading arrangements. The State is committed to closely examining the benefits and costs of government intervention in relation to these arrangements. Implementation will be given to those reforms judged to be in the public interest.

The legislation review report of the *Retail Trading Hours Act 1987* is currently being finalised and is expected to be submitted to Cabinet in 2001.

The legislation review report of the *Liquor Licensing Act 1988* is currently with the Minister for Racing and Gaming. The report is expected to be submitted to Cabinet in 2001.

2.4.11 Education Services

Western Australia is committed to the efficient provision of education services and accordingly has significantly advanced its legislation review and competitive neutrality programs in this area. Legislation reviews have either been completed or are in the process of being finalised. Competitive neutrality reviews of Western Australia public universities and TAFE activities are well advanced.

Legislation reviews of the universities' enabling Acts were endorsed by the previous Government in March 1999. The reviews concluded that most restrictions were minor and in the public interest, while recommending that the investment powers of Edith Cowan University be aligned with those of other universities.

Matters arising from the review of the universities' legislation relating to local council rates, State taxes and land tenure were deferred to competitive neutrality reviews of the Universities, which are now almost completed.

The legislation review of the *Vocational Education and Training Act 1996* was endorsed by the previous Government in November 1999 and it found that the restrictions in the Act were minor and in the public interest.

2.4.12 Social Regulation With Implications For Competition

Western Australia is committed to ensuring that social regulation is aimed at maximising the welfare of the community. Policy approaches in Western Australia are directed at reducing social costs and promoting community values, while not restricting competition to a greater extent than is in the public interest.

Gambling

Significant reform is under way in the laws regulating the racing industry. In the second half of 1999 the previous Government endorsed the following legislative changes recommended by legislation reviews:

- repeal of the *Racing Restriction Act 1927*;

- amendment to the *Racing Restriction Act 1917* to remove the prohibition of horse racing other than thoroughbred and trotting racing, and delete obsolete controls over charity race meetings; and
- removal from the *Western Australian Greyhound Racing Authority Act 1981* of the arbitrary limit on the number of meetings the Western Australian Greyhound Racing Association may conduct.

The legislation review of the *Totalisator Agency Board Betting Act 1960* and the *Betting Control Act 1954* was endorsed by the previous Government. Of the 42 restrictions analysed in the review, 20 were recommended for repeal or amendment. These included:

- removing restrictions on individuals and organisations that can undertake betting activities;
- reducing costs on individuals or organisations engaged in betting activities;
- improving competitive neutrality between businesses engaged in different forms of betting, and between the betting industry and other gambling industries; and
- removing commercial constraints on the TAB.

The Burswood Island Casino's exclusive licence expired on 24 December 2000. New casino licences can now be granted in Western Australia. However, the *Casino (Burswood Island) Agreement Act 1985* places conditions on the granting of a licence for any new casino within a 100km of Perth.

While these conditions limit potential competition, their removal could only be achieved with the agreement of Burswood, or alternatively by legislation without the agreement of Burswood. Unilateral action by the Government would amount to the use of legislative power to release the State from its contractual obligations. This course of action would raise issues of sovereign risk, which could have significant adverse consequences to the State's international and financial standing. Certainly, it would open up the prospect of substantial damages claims.

The costs to the State of removing this restriction unilaterally appear to far outweigh potential benefits to be derived from generating intrastate competition in the casino gaming market. The retention of these restrictions is considered to be in the public interest.

The legislation review of the *Gaming Commission Act 1987* found that the existing regulatory regime lacks flexibility because it does not provide the Government with a mechanism to choose a supplier of State lottery products

other than the Lotteries Commission. A less restrictive regulatory framework was endorsed by the previous Government, allowing the Minister to enter into State Agreements, ratified by Parliament, for the licensing of State lottery suppliers other than the Lotteries Commission, if this is considered by the Government to be in the public interest.

Child Care

Legislation regulating childcare and the registration of child carers in Western Australia is not included in the State's legislation review program. At present, provisions in the *Community Services Act 1972* and the *Community Services (Child Care) Regulations 1988* relate to childcare. A Bill to replace this and other Acts is currently being developed, and will be reviewed once finalised.

2.4.13 Planning, Construction and Development

Western Australia has made substantial progress in reviewing legislation relating to the planning, construction and development services industries. The State has either completed or is in the process of finalising review reports and is committed to making appropriate reforms.

Surveyors

A legislation review of the *Licensed Surveyors Act 1909* has been completed. The review recommended, and the previous Government endorsed, the following reforms:

- to broaden the make-up of the Land Surveyors Licensing Board to include consumer representation; and
- to replace the requirement for licensed surveyors to be of good fame and character with specific provisions determining eligibility to practise.

Town Planning

The *Urban and Regional Planning Bill 2000* is a consolidation of the *Town Planning and Development Act 1928*, *Metropolitan Region Town Planning Scheme Act 1959* and *Western Australian Planning Commission Act 1985*.

A legislation review of the Bill has been drafted for consideration by the Minister for Planning.

Architects

An Inter-Governmental Working Group, with representatives from each State and Territory, has been set up to develop a response to the national review of legislation regulating the architectural profession undertaken by the

Productivity Commission. The working group is expected to respond to heads of government by May 2001.

Western Australia developed a draft review of its Architects legislation prior to the commencement of the national review by the Productivity Commission. This review is now being completed to address Productivity Commission recommendations and to support the Intergovernmental Working Group process.

Valuers

The legislation review of the *Land Valuers Licensing Act 1978* has been completed and the review recommendations are currently being examined in light of the Gunning Inquiry, before being submitted to Cabinet. The recommendations of the Gunning Inquiry have wide ranging implications for a number of occupations, including land valuers. The previous Government agreed in principle to the replacement of seven licensing boards including the Land Valuers Licensing Board by a single authority to license finance brokers, builders, car dealers, land valuers, and real estate and settlement agents.

Painters

As stated in Western Australia's Second Tranche Progress Report, a legislation review of the *Painters Registration Act 1961* has been completed and endorsed by the previous Government. The review recommended a less restrictive set of licensing arrangements.

Plumbers

The legislation review of the *Water Services Coordination Amendment Act 1999* made a strong public interest case for plumber regulation on the grounds of public health and safety. The following recommendations of the report were endorsed by the previous Government:

- the power to prevent unlicensed persons performing plumbing work; and
- the power of the Board to set licence conditions.

The establishment of the Board is part of the restructure of the Western Australian water industry, which has seen the separation of regulatory, service provision and resource management functions, consistent with the COAG strategic framework.

The majority of board members have been drawn directly from industry, with other members representing consumer interests and the regulatory and training sectors. This composition ensures that consumer concerns are

appropriately addressed, and that plumbers and other stakeholders can participate in matters affecting the future development of the industry.

Electricians

A review of regulations derived from Section 32(3) of the *Electricity Act 1945*, which govern the licensing of electricians, is currently under way. The review of restrictions contained in the Act itself has already been completed and the outcome of the review was reported to the NCC in March 1999.

Gas Fitters

The review of the *Gas Standards Act 1972*, which includes licensing provisions for gas fitters and sets the required standards of gas appliances, is under way.

3. STRUCTURAL REFORM

Structural reform is part of a package of State reforms of government businesses, which includes the development of third party access, corporatisation and privatisation, and the application of competitive neutrality principles. The reforms also build on reforms in the early 1990s, preceding National Competition Policy (NCP), such as the separation of the State Energy Commission of Western Australia into Western Power and AlintaGas, and corporatisation of the Water Corporation.

Western Australia continues to meet its structural reform commitments in accordance with clause 4 of the Competition Principles Agreement (CPA). This section outlines Western Australia's progress with structural review and reform. Where appropriate, it also provides detail on matters raised in the NCC's NCP Third Tranche Assessment Framework.

3.1 AlintaGas

Western Australia has achieved significant reforms in the gas industry which have produced a number of benefits. Privatisations of the State's former monopolies have seen substantial private sector investment in the State's gas transmission and distribution sectors. At the same time, a gas access regulator has been established to promote access to infrastructure on reasonable terms and through a transparent and objective process.

The reforms have resulted in lower prices overall for both industrial and domestic gas users, greater efficiency in the domestic use of the State's vast gas reserves, entry of new participants at different levels of the market and an enhanced investment environment.

3.1.1 Towards a More Competitive Market

The process of structural reform of Western Australian energy utilities commenced in 1992 with the establishment of an independent Energy Board of Review (the Carnegie Review). This provided the impetus for a number of early reforms, including the following.

- The disaggregation of the major domestic gas supply contract in the second-half of 1994. This promoted a more competitive supply arrangement by permitting the major gas users in the state to deal directly with the gas suppliers on the North West Shelf.
- On 1 January 1995 the Government created separate electricity and gas utilities from the former State Energy Commission of Western Australia (SECWA) as the government-owned corporatised entities, Western Power

and AlintaGas. As corporatised entities, the utilities were given clear commercial mandates in their respective fields.

- In addition, and in conjunction with broader GTE reforms, the entities were required to operate on a competitively neutral basis *vis a vis* private sector players.
- Policy and regulatory functions of the entities were transferred to the Coordinator of Energy and the Director of Energy Safety, thereby meeting the structural reform commitments under clause 4(2).
- The Carnegie Review also recommended the vertical separation of the gas transmission function from the gas purchase and sales function. In 1996 a decision was made to implement vertical separation of the natural gas transmission and distribution/retail functions.
- The Dampier to Bunbury Natural Gas Pipeline (DBNGP) supplies the majority of the gas consumed in the South-West region. Sale of the DBNGP to Epic Energy in 1998 meant that all gas transmission functions in the state were supplied by the private sector.

In addition to this major asset sale, the Government took steps to ensure open access to the pipeline; and that when it became viable, pipeline on pipeline competition could emerge, by setting aside a proportion of sale proceeds to widen the infrastructure corridor along the DBNGP route. An independent process has subsequently revealed that there is not presently a sufficient business case to build additional pipeline capacity along the route.

There are now five Western Australian gas transmission systems covered under the National Third Party Access Code for Natural Gas Pipeline Systems (the Code). Further details concerning access regulation of covered pipeline systems are provided in section 5.2. Having established an independent Regulator for Code pipelines in 1999 and with its gas access regime certified as effective in May 2000, Western Australia stands to benefit from the enhanced competition and efficiencies that effective access regulation will bring.

Until 2000, AlintaGas remained a government-owned, corporatised, distributor/retailer of gas, although its franchise market has been reduced through progressively lowering contestability thresholds and with the implementation of open access arrangements for the DBNGP (from 1995) and the distribution network (from 1997). Currently over 95 per cent of the WA gas market by volume is contestable. Full retail contestability in gas is scheduled to commence on 1 July 2002.

3.1.2 Clause 4 Review of AlintaGas

The introduction of competition and the consideration of privatising AlintaGas gave rise to the obligation under clause 4(3) of the CPA to conduct a structural reform review. Given the Carnegie Review and the progress with structural reform to date, the key remaining structural question was whether AlintaGas should be vertically separated into distribution and retail businesses; and/or, horizontally separated along geographic lines.

The advent of the Code, especially the ring-fencing provisions contained within the Code which provide a lower cost alternative to structural separation, was also particularly relevant to this structural question.

The sale of AlintaGas by the previous Government encompassed a number of policy objectives for the energy sector that included:

- implementing open access to gas infrastructure consistent with the CPA and the Code;
- encouraging an efficient distribution sector and retail market;
- facilitating the emergence of new retail entrants;
- facilitating competition between energy types to promote an efficient energy market; and
- ensuring adequate safety standards are maintained to protect the interest of the public.

The guiding objectives of the sale itself included to:

- conduct the sale by a process that was fair and equitable to all participants, and which brings the maximum benefits to the people of Western Australia;
- ensure continuing reforms of the energy sector;
- reduce the potential for a conflict of interest between the State as owner of AlintaGas and Government as the proponent of energy policy in Western Australia;
- reduce the State's exposure to the business risks of AlintaGas; and
- reduce future demands upon State capital.

The clause 4 review process in Western Australia comprised a number of elements.

The previous Government's advisers in the AlintaGas privatisation process considered the issue of industry structure in the initial scoping study to support the decision on whether to privatise AlintaGas.

The scoping study presented a number of industry structure options for further consideration by government. It presented an initial analysis of the competitive implications, estimated additional costs and the possible impact on sale proceeds for a range of industry structures.

The key findings of the scoping study's industry structure analysis were that:

- Western Australia has the highest gas consumption in Australia;
- Western Australia has an extremely high concentration of industrial usage and among the lowest concentration of commercial/residential usage;
- nearly 60% of households are already served by distribution systems;
- Western Australia has a highly dispersed distribution system; and
- average gas utilisation by small customers in Western Australia is among the lowest in Australia.

An industry structure working group (ISWG) was formed to further consider these issues. The ISWG commissioned an independent consultant, Allen Consulting, to conduct a further economic appraisal of the options, especially to compare the relative merits of structural separation and ring-fencing, referring specifically to the relevant requirements of clause 4(3) of the CPA.

In addition to the findings above, the Allen Consulting analysis demonstrated that the Code's ring-fencing provisions presented similar benefits but were a less costly substitute to full structural separation of the distribution and retail functions. Moreover, the relatively small commercial/residential market (in terms of both volumes and customer numbers) suggested that horizontal separation of distribution and retail services would not be efficient, and could lead to higher prices than under a regulated monopoly.

The combination of these findings supported a conclusion that the main opportunity for competition in the State is among the largest industrial customers. The smaller end of the market is relatively costly to serve and accounts for a only small proportion of market share.

The previous Government, through the AlintaGas Sale Steering Committee agreed to the recommendation of Allen Consulting to sell AlintaGas as a

'stapled' distributor/retailer in June 1999. It also accepted advice that appropriate ring-fencing and access regulation as envisaged under the Code were paramount in dealing with any residual market power of an integrated distributor/retailer.

As part of the 1997 inter-governmental agreement on gas, Western Australia sought the approval of other jurisdictions and was permitted to delay the implementation of the Code's ring-fencing provisions to the AlintaGas distribution system until July 2002. Allen Consulting recommended that this derogation from the Code's ring-fencing provisions be removed before any sale of AlintaGas.

AlintaGas was privatised during 2000. In July 2000, a consortium comprising Utilicorp and United Energy purchased a 45 per cent cornerstone shareholding in AlintaGas. In October 2000, the balance was sold through an initial public offering, culminating in the listing of AlintaGas Limited on the Australian Stock Exchange on 17 October 2000.

As part of the sale process, the previous Government accepted the recommendation to remove the derogation and secured amendments to ensure that the Code's ring-fencing provisions applied to AlintaGas from the sale's technical completion date, 17 December 2000.

3.2 Westrail Freight

Structural reform has been an integral part of Western Australia's rail reform under successive governments over the last two decades. This has also involved the deregulation of freight transport, the development of a rail access regime and the sale of Westrail's freight business. Westrail freight rolling stock and contracts were sold to a consortium on 17 December 2000 by the previous Government. The Western Australian Government retains ownership of the rail track corridor and infrastructure and leases it to the consortium for a 49 year term. The consortium manages and controls access to the track.

Since 1995, third party rail access to the Westrail track for interstate services between Perth and Kalgoorlie has been provided under commercially negotiated contracts. Until now, access has been provided for intrastate services only to a limited extent, such as tourist trains and a port shuttle service.

Western Australia has legislated to introduce a rail access regime that applies to both interstate and intrastate services. Arrangements to enable the regime to commence operation, including appointment of an independent rail access Regulator is expected to be in place by mid 2001. This will mean that the intrastate rail freight services will become exposed to rail/rail competition in

addition to the existing rail/road competition. Rail access potentially promotes a more competitive lower cost rail service, which is likely to provide a net benefit to the economy.

Clause 4 of the CPA requires that a review be carried out where competition is introduced into a market that was traditionally a public monopoly and before privatising a public monopoly. The previous government's decision to privatise Westrail's freight business and management of the freight network, and the impending introduction of a State rail access regime to govern third party access to the railway network, triggered the requirement for a structural reform review of Westrail.

Western Australia's Rail Freight Sale Task Force completed the clause 4 review in September 1999, and the previous Government endorsed the review in October 1999.

The previous Government had commissioned a scoping study from a consortium of private consultants including Mercer Consulting Group, Deutsche Bank and Booz-Allen & Hamilton, on the ownership and structural options for Westrail in an environment of competition with privatised rail operators. This report was completed in July 1998 and its information was considered as part of the review.

Between July and September 1999, the Legislative Council Standing Committee on Public Administration also examined the proposal to sell the freight business of Westrail.

A key question for the clause 4 review was whether the rail track infrastructure (the natural monopoly) should be sold separately from rolling stock and contracts (the contestable business). Characteristics of the railway considered in this context and compared with other rail systems included:

- volume of rail traffic;
- levels of spare track capacity;
- proportion of traffic which is dependent on economies of scale to make it viable;
- level of inter-modal competition ;
- track network capital investment needs ;
- number of customers served by the network ;
- proportion of traffic that is low-profit or marginal ;

- number of on-rail competitors or potential competitors ; and
- commercial viability of the below rail business as a stand alone operation (low for most narrow gauge lines).

Vertical integration/separation is a continuum, not a dichotomy. The clause 4 review reviewed research on the performance of railways at various levels of vertical separation in other States and countries. This review said it found no evidence of a clear benefit from vertical disaggregation in a rail system that is already subjected to strong inter-modal competition.

The ring fencing provisions of the Railways Access Code were considered by the previous Government to deliver the benefits of separation with less cost or impact on system efficiency than full structural separation. Taking the above matters into account, the clause 4 review concluded that a model closer to vertical integration than to vertical separation, within the regulatory context of the Railways Access Code, would provide the most cost-effective rail transport solution for users and the economy.

The review also examined the merits of horizontal separation of the freight and passenger services. There are significant differences between the freight and passenger services in terms of the market served, their commercial viability, their technology and operational requirements. They also operate largely on physically separated track networks. The decision based on the advice received was to separate the freight and urban passenger components of Westrail. The country passenger business is relatively small, but was found to have more in common with the urban passenger business than the freight business.

The review also considered horizontal separation within the freight business, finding that it was not appropriate because of lost economies of scale and the added complexity of multiple players in a tightly integrated logistics chain, such as grain transport.

The clause 4 review concluded that separation of regulatory functions from commercial functions has already been implemented. It also concluded that deregulation of the freight market, which commenced in 1980 and was completed in 1995, already allows for full competition with road transport. Previous regulatory mechanisms had already been replaced with contractual arrangements and safety regulation had been transferred to the Department of Transport under the *Rail Safety Act 1998*.

The clause 4 review concluded that post-sale, competitive neutrality measures would not be necessary for the privatised business. However, the review recommended continuation of land tax and local government rate exemptions for the railway corridor, based on maintaining competitive neutrality with road transport, where the road corridor is not subject to such tax imposts.

In the context of the price and service regulation to be applied, the review found that the proposed rail access regime and independent access regulator would provide an appropriate framework for regulating price and service standards for the monopolistic characteristics of the below rail business. This will be regulated through the Rail Access Code which specifies a pricing range and prescribes the framework within which commercial negotiation must occur. In accordance with the proposed Rail Access Regime, elements of the pricing principles will be approved or determined by the independent rail access regulator.

3.3 Western Power

The new Labor Government's recent election commitments outlined its plans for reforming the electricity industry.

The Government has acknowledged that reform of the industry has not kept pace with developments in other Australian states, in part due to its inability to participate in the national market, and that Western Australia has higher prices than needs be.

The Government is to retain Western Power in public ownership.

The key elements of the Government's election platform were to:

- introduce genuine competition by structurally separating Western Power's generation division from its other divisions to enable more effective participation by private generators in the future; and
- promote fair trade and accountability by establishing a regulator with powers over the electricity industry, including access regulation, ring-fencing and industry conduct; and an electricity code to facilitate a well functioning market.

The ultimate goal for the Government is to have a fully contestable market for electricity by 2005. Contestability thresholds are to be progressively lowered from their current level of 1 megawatt in the following steps:

- to customers using 0.23 megawatts or more at a single site from July 2001;
- to customers using 0.034 megawatts or more from January 2003; and
- aim to give all electricity customers freedom to choose their own supplier by 2005.

In order to meet this timetable, the Government has foreshadowed a significant commitment to establish an Electricity Reform Steering Group to develop detailed recommendations for:

- the reform timetable;
- the structure of the electricity market to be established;
- the extent and phasing of the disaggregation of Western Power best suited to achieving Labor's goal of lower electricity prices in Western Australia;
- measures to enhance competition in electricity retailing; and
- arrangements for implementing full retail contestability.

The Group would ensure that the State's structural reform and other NCP obligations are met. Significant work remains to be done in implementing this reform program according to the proposed timetable.

3.4 Other NCC Issues

The NCC stated in its NCP Third Tranche Assessment Framework that Western Australia would need to ensure that its clause 4 obligations under the CPA are met prior to the privatisation of Cooperative Bulk Handling (CBH) or the introduction of competition into the market.

However, as CBH is not a public monopoly and has been a privately owned cooperative since its inception in 1933, it was considered inappropriate to conduct a review.

Nevertheless, unlike most privately owned entities, CBH does have specific enabling legislation, and accordingly Western Australia has scheduled a legislation review of the *Bulk Handling Act 1967* and regulations.

The NCC states in its NCP Third Tranche Assessment Framework that Western Australia will need to demonstrate that any structural reform obligations arising from the establishment of the Conservation Commission and the Forest Products Commission have been met.

Reform of the State's forest management and regulation structures has been a significant step forward. A number of the components of structural reform listed in clause 4 of the CPA have been instituted, including removal of regulatory functions from the new forestry entity, the Forest Products Commission, and commercialisation of the FPC.

However, the obligation to undertake a structural reform review under clause 4 has not been triggered. Each of the forest agencies (Department of

Conservation and Land Management, Forest Products Commission and Conservation Commission) remains a public entity and the reforms have not opened up any new areas of the native forestry and plantation industries to competition.

4. COMPETITIVE NEUTRALITY

The application of competitive neutrality to all significant government businesses is an integral part of the State's ongoing reform of government owned businesses, to increase efficiency and generate benefits to the community. Western Australia's commitment is outlined in the State's Policy Statement on Competitive Neutrality (June 1996) which also includes an implementation schedule for significant business activities.

Western Australia's program of competitive neutrality implementation and review is substantially complete. The State's biggest utilities have been subject to competitive neutrality for a number of years. For example, Western Power and the Water Corporation have been fully corporatised since the mid 1990s. Other large government businesses such as Westrail and AlintaGas were corporatised and have been subsequently privatised.

These businesses have accounted for more than 80 per cent of the business revenues earned by the Government and provide the bulk of the benefits expected to be received from implementing competitive neutrality.

The remaining agencies account for a small proportion of government business revenues and consequently have the potential to make only a minor contribution to the benefits from competitive neutrality reform.

Nevertheless, since the second tranche assessment Western Australia has focused its attention on the smaller government agencies that are considered to be significant on the basis of criteria outlined in the State's Policy Statement on Competitive Neutrality. This has involved conducting reviews to see whether implementing competitive neutrality is in the public interest, and if so how competitive neutrality should be introduced.

4.1 Significant Government Businesses - Review and Implementation

- With the privatisation of **Westrail Freight** and the following measures applying to the urban passenger rail system, competitive neutrality is largely implemented.

The reforms implemented to the passenger network include:

- a taxation equivalent regime;
- a government debt guarantee payment;
- a fully commercial costing regime; and

- regulatory neutrality with competing businesses.

Community service obligations are fully commercially costed and transparently provided for Westrail's passenger services.

- The **Bunbury Water Board (Aqwest)** and **Busselton Water Board** competitive neutrality reviews were completed and endorsed by the previous Government in August 2000 and recommendations to implement competitive neutrality are being implemented.

The changes being implemented include introducing the payment of local government rate equivalents; the requirement to earn a rate of return on assets; provision for payment of dividends to the budget and removal of the exemption from State Government taxes.

- Competitive neutrality has been applied to all Western Australia's **Port Authorities** with the enactment of the *Port Authorities Act 1998*.
- A review of **LandCorp** resulted in new legislation applying commercialisation principles. This has resulted in the removal of LandCorp's regulatory and policy functions; imposition of State taxes and local government rates through tax and rate equivalent payments; and application of transparent community service obligation payments.
- A review of the **Lotteries Commission of Western Australia** was completed and application of competitive neutrality was found to not be in the public interest. The review argued that there would be an associated reduction in community funding from the Commission without any significant improvement in the allocation of resources throughout the economy.
- The competitive neutrality review of the **Western Australian Treasury Corporation (WATC)** resulted in legislative amendments to implement commercialisation. The WATC's exemption from State duties and taxes has been removed, and a requirement for the WATC to earn a return on capital has been imposed.
- The **Forest Products Commission** was established in late 2000 as a competitively neutral forestry business with a commercial objective, covering both native and plantation forestry. Measures applying to the FPC include preparation of business plans approved by the Treasurer, and payment of charges, tax equivalents and dividends. A hardwood log prices review is under way, which includes in its terms of reference the principles of competitive neutrality as well as Treasury's guidelines on *Costing and Pricing Government Outputs*.

- The **Government Employees Superannuation Board's (GESB)** competitive neutrality review completed in early 1998 found that under the existing structure and funding arrangements for public sector superannuation, it was not in the public interest to implement competitive neutrality. However, given the *State Superannuation Act 2000* provides the flexibility to exercise choice in superannuation fund membership for government employees, the competitive neutrality status of GESB is expected to be revisited in 2001.
- The competitive neutrality review of **Agriculture Western Australia** was completed in November 2000 and competitive neutrality is being implemented for:
 - services provided to the general public such as animal and plant health laboratory services, information services and publications; and
 - services provided to research and development organisations in competition with private research providers.
- Dairy industry reforms have been implemented leading to the winding up of the **Dairy Industry Authority of Western Australia** and its regulatory functions. A new grower owned entity was established that continues to provide some services to industry such as advice on value adding, milk quality and price monitoring.
- The **East Perth Redevelopment Authority** and the **Subiaco Redevelopment Authority** reviews concluded that no net public benefit would be derived by further subjecting the authorities to the principles of competitive neutrality.
- The competitive neutrality review of the **Valuer General's Office** completed in November 2000 recommended that the Office operate in a competitively neutral manner and this was endorsed by the previous Government. The Office is changing its cost and pricing structures to remove advantages and disadvantages that exist as a consequence of its government ownership.
- The competitive neutrality review of **Homeswest**, the Ministry of Housing's public housing operation, was endorsed by the previous Government in late 1999. Legislation is being prepared to implement the endorsement and other reforms, which would see the introduction of a new public housing structure with clear separation of business practice functions from community service functions. The **Government Employees Housing Authority**, also listed for review, is to be abolished by the proposed new housing law.

- The competitive neutrality review of the **Office of the Public Trustee** (PTO) was completed and endorsed by the previous Government in November 2000. The review found that the PTO should implement competitive neutrality in full. The PTO is currently preparing a timetable for introduction of measures to achieve this.
- The repeal of the single desk arrangements for the export of lamb has led to the winding up of the **Western Australian Meat Marketing Corporation (WAMMCO)** and the non-regulatory functions of WAMMCO have been transferred to a grower owned cooperative which trades in lamb and other meats.
- The review of the **Rural Adjustment and Finance Corporation** has shown that there are currently no commercial activities carried out by the agency.

4.2 Reviews in Progress

The competitive neutrality review of the following government businesses are all under way but yet to be finalised:

Golden Eggs Farms (which is controlled by the Egg Marketing Board);
Grain Pool and the Grain Corporation;
Pathology Centre;
Perth Market Authority;
Publicly owned universities;
Rottnest Island Authority;
TAFE activities;
Totalisator Agency Board (TAB); and
Western Australian Tourism Commission.

4.3 Community Service Obligations

The previous Government endorsed the release of *Community Service Obligations Policy in Western Australia* in April 2000. This document outlines its preferred approach to the identification, costing, funding and monitoring of community service obligations (CSOs) performed by corporatised and commercialised government trading enterprises (GTEs) in Western Australia. The paper updated a CSO Information Paper released by Treasury in January 1996.

The revised paper establishes a more coordinated and focused framework for endorsing new CSOs. In particular, it requires agencies to prepare a detailed submission with respect to the proposed CSO and seeks to ensure issues regarding appropriate funding mechanisms are discussed with Treasury prior to being submitted to the portfolio Minister and Cabinet for consideration.

Under the previous arrangements there was no periodic review of ongoing CSOs to determine whether the Government's original policy objectives were still being met through the provision of the CSO and whether those objectives continue to be relevant in the context of latest Government policy. The revised paper requires such a periodic review, which will assist in identifying whether the provision of the CSO is still the most effective and efficient means through which to achieve the Government's social objectives, vis-à-vis other alternatives.

The enabling legislation of the State's corporatised and commercialised GTEs requires their Statements of Corporate Intent (SCIs), which are public documents, to include information on:

- the nature and extent of CSOs that are to be performed;
- the costings of, funding for, or other arrangements to make adjustments relating to, CSOs; and
- the ways in which, and the extent to which, compensation will be made for providing CSOs.

Where Government directly funds CSOs, the quantum of funding provided is reported in the State Budget Papers under Treasury's 'Details of Administered Transactions Expenditure'. In addition, the range and value of concessions provided by government agencies, including by the Water Corporation, are reported in the State Budget Papers (refer to Appendix 8, *State Government Social Concessions Expenditure Statement*, in Budget Paper No. 3).

Following a review of CSOs by the State's Public Accounts Committee, the Government has also signalled its intention to further enhance the reporting of CSOs in the Budget Papers. It is intended that this occur through the inclusion of an additional appendix that details all payments to corporatised and commercialised GTEs that support the provision of goods and services to the general public.

4.4 Competitive Neutrality Complaints Process

4.4.1 Clause 3 Statement and Process

Western Australia has in place a competitive neutrality complaints mechanism in accord with its obligations. Western Australia's clause 3 policy statement notes that *'the complaints mechanism will apply only to public sector agencies which are required to comply with competitive neutrality and to in-house bids taking part in a formal tender process'*.

Complaints may be made by individuals, businesses and industry groups in the private sector and agencies of other jurisdictions (which are already subject to competitive neutrality) who:

- are, or may be, directly and adversely affected by the competitive advantage alleged to be enjoyed by the Western Australian Government agency carrying on a significant business activity; and
- compete in a particular market with the Western Australian Government agency, or seek to compete in a particular market with the Western Australian Government agency but are prevented from doing by the competitive advantage alleged to be enjoyed by the agency.

Responsibility for handling complaints under the previous Government rested with the Cabinet Government Management Standing Committee (GMC), which included key members of the Western Australian Cabinet. It is intended that competitive neutrality complaints will now become the responsibility of the subcommittee of the Expenditure Review Committee which is a sub-committee of Cabinet. A Competitive Neutrality Complaints Secretariat (the Complaints Secretariat) situated within Treasury provides administrative support.

Complaints against local government for non-compliance with competitive neutrality are dealt with under a separate process coordinated by the Department of Local Government.

4.4.2 Complaints Handling Process

The complaints handling process involves complainants initially making contact with the agency alleged not to be complying with competitive neutrality to discuss (and, if possible, resolve) the allegation. If resolution of an allegation of non-compliance with competitive neutrality between the complainant and the relevant agency cannot be reached, complainants should then lodge a complaint in writing with the Complaints Secretariat. Allegations of non-compliance need to be accompanied by sufficient evidence to establish a prima facie case for investigating an agency's pricing strategy, cost structure and behaviour.

The Complaints Secretariat is responsible for the initial screening of the complaint. The Secretariat will determine whether the complaint falls within the scope of the complaints mechanism and warrants further investigation.

Where a complaint meets the criteria the Complaints Secretariat will carry out the investigation in accord with the clause 3 policy statement. The Complaints Secretariat reports its finding to the Expenditure Review Committee. The report contains an assessment of whether the Government agency enjoys a competitive advantage by virtue of its ownership by

Government, and whether the removal of this advantage is in the public interest.

- Where the Complaints Secretariat concludes there has been no breach of competitive neutrality and the Expenditure Review Committee concurs with that recommendation, the Complaints Secretariat will advise the complainant in writing of this outcome. There is no appeal mechanism.
- Where the Expenditure Review Committee concurs with a finding by the Complaints Secretariat that there is a breach of competitive neutrality then the Cabinet committee may determine that the competitive advantage should be removed.

The Expenditure Review Committee will decide on a case by case basis what action should be taken if an allegation of non-compliance is proven, taking account of the seriousness and nature of the non-compliance. Monitoring implementation of any Government decision with respect to the removal of competitive advantages will subsequently be undertaken by the Treasury.

4.4.3 Complaints Received

The Complaints Secretariat has received eight written complaints about the activities of Government owned businesses or businesses linked to Government where a concern or allegation of non-compliance to the policy competitive neutrality was raised. These were complaints from:

- holiday accommodation providers against the Department of Conservation and Land Management regarding the department's development of a site for a camping and bunk-house facility.
- an alternative fuels proponent against Western Power regarding the alleged use of interest free loans to construct a gas pipeline to Windimurra.
- an engineering firm against the University of Western Australia, which was providing facilities to a business activity run by an academic.
- a maritime training course provider against the Fremantle Maritime College of TAFE regarding the pricing of small ships training courses.
- an internet service provider against a Government sponsored Tele-centre at Broome.
- a fitness centre against the pricing policy of a Police and Citizens Youth Club at Port Hedland.
- a fitness centre against the pricing policy of a Police and Citizens Youth Club at Geraldton.

- a private omnibus operator against the Eastern Goldfields Transport Board regarding an alleged process of cross subsidising charter operations with funds from its core government funded bus urban transit services.

Of these complaints, one has been the subject of a formal investigation. This investigation examined the complaint by an alternative fuel proponent against Western Power and AGL. This complaint was found to be invalid by the Secretariat because Western Power and AGL were not receiving an interest free loan as was alleged.

The other seven complaints listed above were examined and found not to fall within the scope of the competitive neutrality mechanism, because the businesses to which they related either were not Government businesses, or were not subject to competitive neutrality.

In response to five of these seven complaints, the Secretariat sought to intermeditate between the parties on the basis of competitive neutrality principles.

A further two competitive neutrality complaints outside the State's jurisdiction were raised in writing with the Secretariat:

- a food transporter regarding the operations of the Tasmanian Freight Equalisation Scheme, a Commonwealth program; and
- a private research provider complaining about the pricing of road research activities of ARRB Transport, a Commonwealth-owned business.

In addition to the complaints listed, the Secretariat has received informal complaints or inquiries by telephone regarding competitive neutrality and how it applied to the activities of government owned businesses. In each case, the complaints handling process has been explained to the inquirer or potential complainant.

5. RELATED REFORMS

Western Australia is committed to the agreement to implement related reforms in the areas of water, gas, electricity and road transport and has substantially met its reform obligations. Sections 5.1 to 5.4 provide an outline of Western Australia's progress on each of the related reforms.

5.1 Water

Western Australia is committed to the effective implementation of the COAG agreements. In line with this commitment significant reform has been undertaken in the adoption of two-part tariffs across the State and the introduction of a comprehensive system of water entitlements, including provision of water for the environment, and the establishment of legislative provisions for water trading. The new allocation and trading regime will allow farmers to buy or sell water entitlements where they choose to do so and provides a process to determine how much water should be retained for the environment when allocating and reviewing water entitlements.

5.1.1 Pricing and Cost Recovery

Consumption-Based Pricing

Water Supply Services

There are three main providers of water supply services in Western Australia: the Water Corporation; Aqwest (formerly the Bunbury Water Board); and the Busselton Water Board (BWB). All three organisations have substantially implemented two-part tariffs, comprising of a fixed access component and a volumetric component, in relation to water supply services to residential customers.

In 2000/01, the Water Corporation commenced a program of tariff reform that will reduce the service charge for vacant residential and commercial land to the equivalent of the residential fixed service charge over a two year period. Previously, service charges for vacant commercial and residential land were based on gross rental value (GRV).

Full details on the implementation of pricing and cost recovery are provided in Attachment 5.

Tariffs reforms implemented in Western Australia to date mean that charges for water supplied to 99.5% of customers are now based on two-part tariffs.

Sewerage and Drainage Services

The Water Corporation supplies sewerage services to the majority of Western Australia, although twenty local authorities operate their own sewerage schemes. However, apart from the Water Corporation, only the City of Kalgoorlie-Boulder, which has around 10,000 connections, operates a significant sewerage scheme in Western Australia.

The Water Corporation is continuing to phase-in two-part sewerage tariffs for commercial customers. These are made up of a service charge, based on the number of major sewerage fixtures (toilets and urinals), and a usage charge, determined from a discharge factor which calculates the volume discharged into the Corporations sewerage system¹.

As part of a program to implement a single fixed charge for residential sewerage services, which will replace existing charges based on GRV, the Corporation is increasing the minimum charge by 10% per annum. This increase is in addition to any approved general price rise. In 2000/01, the minimum residential sewerage charge was \$214.60 in the metropolitan area and \$186.70 in the country.

As with sewerage, minimum drainage charges have been increased by more than the approved general price increase, to facilitate the introduction of a single fixed charge for residential drainage services supplied by the Water Corporation. In 2000/01, the minimum residential drainage charge was \$47.40 in metropolitan areas. The minimum charge now applies to 80% of residential customers consuming drainage services.

Irrigation

The Water Corporation supplies bulk water to the South West and Preston Valley Irrigation Cooperatives, which own their respective distribution assets. The bulk water tariffs paid by irrigators in these schemes are based on recovering the lower bound of the COAG pricing guidelines. That is, tariffs recover operating and maintenance costs, interest cost on debt, State taxes and Commonwealth tax equivalents, and make provision for future asset refurbishment/replacement through a renewals annuity.

The Water Corporation presently still owns the irrigation assets that form part of the Carnarvon and Ord River Irrigation Schemes.

The Corporation has established processes to assess the appropriate framework under which distribution assets in both the Carnarvon and Ord Irrigation Schemes could be transferred to local ownership.

¹ A 200-kilolitre discharge allowance applies to each commercial property annually. No usage charge applies to properties where the annual volume of discharge is less than this amount.

Full Cost Recovery

Water supply tariffs of the three water service providers in Western Australia are based on achieving full cost recovery in accordance with the COAG pricing guidelines.

Where approved tariffs for regulated water businesses do not recover the full cost of service provision, including a rate of return on assets, the shortfall is directly funded as a Community Service Obligation (CSO) from consolidated revenue (refer to discussion under CSO section below).

Irrigation Services

As part of the transfer of irrigation distribution assets from the Water Corporation to the South West Irrigation cooperative, the Government provided a transitional subsidy. This was phased out in 1999 /2000, to enable the effective tariff paid by irrigators to gradually reach the lower bound of the COAG pricing guidelines. The operating subsidy was paid directly to the irrigators' cooperative.

Cross-Subsidies

The Water Corporation has implemented tariff reforms aimed at:

- reducing the level of cross-subsidisation between business and residential customers; and
- ensuring that tariffs better reflect the cost of service provision.

The Corporation has also implemented programs to:

- financially ring fence its metropolitan bulk water operations (effective 1 July 2000);
- implement a single fixed charge for vacant commercial and residential land (phased in over 2 years from 1 July 2000); and
- implement a single fixed charge for residential sewerage services (phased in over 10 to 11 years from 1 July 1997).

Community Service Obligations

Policy

Detailed information on CSO policy in Western Australia, and general reporting of CSOs, is provided in Chapter 2, Competitive Neutrality. Reporting of CSOs in the water industry is provided in Attachment 5.

Water Corporation

CSOs performed by the Water Corporation include:

- the provision of pensioner and senior concessions:
- the supply of water, sewerage and drainage services at uniform tariffs, where those tariffs may not be sufficient to recover the full cost, including a rate of return on capital, of providing these services (\$151 million); and
- the provision of infill sewerage, where uniform tariffs are insufficient to recover the full cost, including a rate of return on capital, of providing this service (\$15 million):

Aqwest and BWB

Aqwest provides rebates to pensioners and seniors.

The BWB also provides a rebate to both owners and tenants of properties who hold a current Pensioner and Senior Card.

New Rural Schemes

The Department of Environmental Protection, the Environmental Protection Authority (EPA) and the Water and Rivers Commission (WRC) are currently involved in assessing the ecological and environmental impact of developments that impact on water resources, including development of the water industry itself. The second tranche review noted that “formal environmental processes are in place to ensure assessment of environmental impacts of rural schemes”.

Western Australia is committed to establishing a comprehensive framework through which the economic viability and ecological sustainability of future investments in new rural water supply schemes, or extensions to existing rural water schemes, will be assessed. Such a framework is currently developed, and is expected to be considered by Cabinet by 30 June 2001.

It is anticipated that the formal framework would draw on existing legislation through which ecological sustainability is assessed, but would integrate this in assessing the economic viability of investments in new rural water supply schemes, or extensions to existing rural water schemes.

The proposed framework is provided in Attachment 5 under the heading ‘New Rural Schemes’.

The assessment may indicate that the investment is expected to generate overall economic benefits, despite revenue being insufficient to meet the project’s direct

costs. In such cases, the government may consider providing a subsidy, or other means of support, to the project proponent to ensure the project is commercially viable if Cabinet decided that the project should proceed.

In addition, the newly elected Government has also signalled its intention to establish an Ecological Sustainable Development Unit to undertake an assessment of cabinet submissions, proposed legislation and agreements entered into by government for ecological sustainability.

5.1.2 Institutional Reform

Institutional Role Separation

The institutional structure in the Western Australian water industry demonstrates substantial commitment to the strategic framework. A program of restructuring and corporatisation has resulted in the establishment of the Water Corporation, the Office of Water Regulation and the Water and Rivers Commission from the Western Australian Water Authority.

The roles and responsibilities of all bodies in the water industry are now clearly defined and the essential elements of institutional reform have been met. The arrangements provide significant separation of service provision roles from those of standard setting, resource management and regulation.

Western Australia has had a single Minister for water service provision and water regulation. There is no requirement under COAG to have a separate Minister for these responsibilities. The COAG framework focuses on separate institutional arrangements rather than separate Ministers and this should therefore form the basis of the third tranche assessment. Nevertheless, this arrangement is under review as part of the Government's current Machinery of Government review.

Performance Monitoring and Best Practice

The Water and Rivers Commission actively participates in the national process developed for inter-agency comparisons and benchmarking. Benchmarking systems have recently been put in place for the Non-Metropolitan Urban and rural sectors while the Water Services Association of Australia reports annually on progress with major urban water service providers.

Aqwest has also been involved in benchmarking for 3 years with the Victorian Water Association and the Australian Non Major Urban Water Utilities report.

Formal benchmarking for water resource management agencies has not been established in Australia. Comparisons are achieved through national forums on water resource management, water resources law and reform. WA participates in ARMCANZ, SCARM, the High Level Steering Group on Water, and the High

Level Group on Natural Resource Management and projects undertaken by these groups.

Commercial Focus

The restructure of the Western Australian water services industry in 1996 resulted in the establishment of the Water Corporation as a corporatised agency with an overriding commercial objective. Based on the information provided during the second tranche assessment, the Council indicated that it was satisfied that the Corporation has a commercial focus to maximise efficient service delivery.

As noted under the section dealing with CSOs, Aqwest and the BWB have both completed competitive neutrality reviews as required under National Competition Policy. In addition, potential competitive restrictions in the *Water Boards Act 1904* have also been reviewed. Detailed recommendations of the reviews are outlined in Attachment 5 under the heading 'Commercial Focus'.

Irrigation Scheme Management

Western Australia has substantially met its obligation to give constituents a greater degree of responsibility in the management of irrigation areas. Information on individual schemes is provided in Attachment 5 under the heading 'Irrigation Scheme Management'.

5.1.3 Allocation and Trading

Western Australia has implemented a system of water allocation and trading which allows water be traded to achieve maximum benefit to the economy, while ensuring that the level of water consumption is sustainable and that there is adequate provision for environmental needs.

Water Allocation

This section provides a detailed response to the concerns outlined by the NCC in its Third Tranche Assessment Framework.

The Water and Rivers Commission investigates the resource capacity and demand for water and proposes allocation strategies that it believes protect the ecology and the social structure of communities that depend upon the water resource. The Minister for the Environment approves and puts conditions on the allocation strategies based on advice the Environmental Protection Authority provides following assessment of the environmental impacts of the strategy.

The water resource allocation legislation, the *Rights in Water and Irrigation Act 1914*, includes objectives that require the various demands on the water resource to be balanced. In accord with this, Western Australia's system of water allocation

is to allocate up to the sustainable yield of a water resource after Environmental Water Provisions (EWPs) are accounted for.

Planning provisions of the Act provide the framework for estimating the sustainable yield of water resource systems and allocating the sustainable yield between competing demands. The allocation of rights to take the water for private and public use is through transferable licences. The licences themselves and the activities authorised by the licences can be modified if plans are altered to accommodate changing conditions and improved information.

All licences are tradeable. Western Australia supports the National Principles for (Ecologically Sustainable) Water Trading, as proposed by the High Level Steering Group on Water. As such Western Australia is committed to ensuring the development and operation of trading markets which are consistent with the objective of ecological sustainability.

Overland flows can be managed under local by-laws if the use of the overland flow causes a reduction in the flow of a watercourse, or if it has a significant effect on the quality of the water or an ecosystem. To date Western Australia has not had any significant developments in this regard and has not found it necessary to formulate any by-laws.

Water Property Rights

Licences issued under the *Rights in Water and Irrigation Act 1914* create water property rights. Licences are issued separately to the land title and any person can apply for a licence if they have access to the water resource, or possess a statutory right to use the water.

The rights and responsibilities of the Crown and the users are specified in the *Rights in Water and Irrigation Act 1914*. Water resources are all vested in the Crown and certain basic rights to take water, for domestic and other uses, are specified in the Act.

Licences include specifications of the water volume that may be taken under a licence together with terms and conditions that regulate the manner, places and times at which the water is taken. General conditions and restrictions on the taking of water are specified in the primary and subsidiary legislation. For example water users have a duty to take all reasonable steps to minimise the degradation of the water resource and their impact on other water users.

Water rights or licences granted under the *Rights in Water and Irrigation Act 1914* are renewable, transferable and can be leased for specific periods. The approval of the Water and Rivers Commission is required where leases are transferred or leased.

The *Rights in Water and Irrigation Act 1914* requires the water resources manager and other people with functions under the legislation to "provide for the

protection of their ecosystems and the environment in which water resources are situated, including by the regulation of activities detrimental to them.” Community consultation is required by advertising licence applications that may have a significant impact on other users or the environment.

The sustainability of use and the balance between competing users is considered through a process of allocation planning and review. The legislation provides for the writing of regional, subregional and local water resource allocation plans. The planning process provides for the revision of licences if the review finds that reallocation is necessary and for plans to be reviewed at least every seven years.

The legislation provides a requirement that licence changes be made in a fair way that properly considers the needs of all licence holders. It also prescribes circumstances under which licence holders must be compensated.

Western Australia has implemented and formalised in legislation plans specifying EWPs, sustainable limits and the requirements of licensing. Licences can be amended to ensure they comply with the current plan. The legislation allows plans and licences to be altered at any time as it is proposed that problems be addressed as they are, rather than constrain changes to a five or ten year frequency. This gives water users increased security as the tendency to delay corrective action is avoided.

Constraints on water rights and trade that are implemented through planning must be subject to full public consultation and be justified on grounds acceptable to the community.

Provision for the Environment

Western Australia is committed to the ARMCANZ/ANZECC Principles for the provision of water for ecosystems. Western Australia’s report against each principle is included in Attachment 5.

Provision for the environment is set in all water systems from a ‘notional or interim allocation limit’ in under-allocated and under-stressed systems to formal Ecological Water Provisions (EWPs) in areas that are highly or fully developed.

The *Rights in Water and Irrigation Act 1914* (as amended 2001) provides a statutory basis for the Commission’s allocation plans which set the allocation of water between consumptive use and environmental purposes. In all proclaimed groundwater areas of the state, allocation limits for consumptive use have been set. Explicit in this limit is the allocation to the environment, which has been set prior to the allocation for consumptive use.

The monitoring and review process forms a major component of management plans. In groundwater areas, monitoring bore networks involves the continuous monitoring of water levels and water quality in each aquifer system to determine

the impact of pumping and leakage characteristics which potentially may impact on any dependent ecosystems. The Commission has pioneered the development of methodologies for the determination of EWPs for groundwater dependent ecosystems in Australia.

Wetland loss mitigation has been given legal effect through the imposition of legally binding conditions set by the Minister for the Environment which are delivered from environmental impact assessments undertaken by the Environmental Protection Authority. Accordingly, the EPA is currently finalising the draft of Position Statement No. 2 – Wetlands Protection.

The State Groundwater EPP and State Marine Waters EPP provide for the statutory identification and priority management of 'critical areas' through regulations or schedules developed under the relevant EPP. These subordinate instruments may include areas where the environmental values of water are not being attained or are considered by the EPA to be 'stressed'.

Water Trading

Western Australia supports development of the National Principles Water Trading, as proposed by the High Level Steering Group on Water and is committed to ensuring the development and operation of trading markets promote ecologically sustainable activities.

Trading and leasing has been possible since 10 January 2001 when the *Rights in Water and Irrigation Amendment Act 2000* came into effect. A public register of licences has been established to help prospective purchasers seek out a seller. The Commission is finding that regular enquiries are made of the register but as yet no trades have eventuated.

The only prospect for interstate trading is with the Northern Territory where the proposed Stage 2 of the Ord Irrigation project crosses the state boundary. Agreement has been reached in principle between the jurisdictions so that if the project proceeds:

- Western Australian water allocation legislation will apply throughout the project area; and
- Northern Territory drainage legislation will apply to all drains that discharge in the Territory.

5.1.4 Environment and Water Quality

Western Australia is actively implementing Integrated Resource Management and Integrated Catchment Management and is developing its State Water Quality Management Strategy (SWQMS) in accord with the National Water Quality Management Strategy (NWQMS). This section provides a detailed response to

the NCC's concerns that were outlined in its Third Tranche Assessment Framework.

Integrated Resource Management

Integrated resource management mostly occurs through regional Natural Resource Management groups and catchment groups, with support from local government and State Government agencies. The State Government has a process for endorsing regional strategies. Once endorsed, these will provide the foundation for the development of partnership agreements between government agencies and the regional groups for implementation of the strategies. In order to achieve endorsement, regional strategies must demonstrate integration across land, water and biodiversity issues, outline objectives, proposed outcomes and targets and include a monitoring and evaluation program.

Activities being undertaken to improve water quality include:

- support and advice to community groups and individuals on activities relating to river restoration and management;
- the establishment of around 145 Land Conservation District Committees (LCDCs), which are, in effect, statutory landcare groups;
- the review of the process for the development of arterial drainage plans in order to ensure water quality issues and stormwater management are appropriately accounted for; and
- joint preparation by the Department of Environmental Protection (DEP) and the Commission of schedules protecting the quality and quantity of the groundwater meeting over half Perth's water use and sustaining environmentally valuable wetlands and vegetation.

Integrated Catchment Management

Integrated Catchment Management (ICM) and particularly the salinity management aspect, is part of the portfolio of the Minister for the Environment. The Minister for the Environment works closely with the Minister for Agriculture, Fisheries and Forests to deal with broader Natural Resource Management (NRM) issues and provides an integrating mechanism for government agencies involved in NRM/ICM.

A series of regionally based groups is responsible for the development and implementation of regional NRM strategies. The chairs of these groups meet and also sit on the State Salinity Council which is a forum for working with industry and conservation groups.

The State Government has a Cabinet endorsed policy to set up partnership agreements with these regional bodies to implement the strategies. Funding and

resource support from the agencies, in return for meeting defined outcomes, will form the basis of the partnership agreements.

National Water Quality Management Strategy

During 2000 the previous Government developed the State Water Quality Management Strategy (SWQMS) which will be the vehicle through which the National Water Quality Management Strategy (NWQMS) and its component guidelines will be implemented. The SWQMS has been developed by a Senior Review Panel (SRP) of officers from key government agencies and its development has involved a lengthy consultation process with stakeholders in 1999.

The SWQMS consists of a number of documents that use the national approach to water quality management as outlined in the NWQMS. This approach includes policies, principles, objectives and implementation strategies agreed to across Australia. It recognises that water quality management is a responsibility shared by all levels of government, industry and the community.

Consistent with the NWQMS, the document to go to Cabinet is the first in the series and will outline the framework for implementation. The second document will be the implementation plan, which will set priorities for implementing the NWQMS guidelines. It is planned that this document will be finalised by June 2001. Subsequent documents will mirror the NWQMS guidelines, set out the method of implementing each guideline, and identify the lead agency responsible for each area. For example, the Department of Environmental Protection is currently developing the management framework for the implementation of the *Australian Water Quality Guidelines for Fresh and Marine Waters*.

Implementation of the framework for Western Australia's fresh and marine waters will take a cooperative approach that involves all stakeholders, and will be formalised through statutory Environmental Protection Policies (EPPs). As a first step, Cabinet has requested the EPA to prepare a Cockburn Sound EPP, one of the State's most intensively used water bodies. Activities in the Sound and its catchment will be required to be consistent with the statutory objective of protecting the Sound.

Amendments to the *Environmental Protection Act 1986* have been prepared to incorporate the term 'environmental value', thus enabling the use of EPPs to implement the NWQMS framework. These amendments will also promote institutional reform and capacity-building, such that environmental impact assessment of proposals, licensing of effluents and assessment of contaminated sites can be carried out within the context of ecological sustainability and the NWQMS framework.

5.1.5 Public Consultation and Education

Consultation Prior to Change

Western Australia has developed a comprehensive program of public consultation and education.

Public consultation is an ongoing part of the Water and Rivers Commission planning process for establishing and reviewing water allocation plans. The Water and Rivers Commission has also carried out public consultation and education in relation to trade in water entitlements and environmental water provisions.

The development of the Environment Water Provisions Policy followed considerable public and stakeholder consultation. Water resource management committees are now an important means by which public consultation is achieved.

In relation to service provision, the Water Corporation has a permanent Customer Advisory Council representing the general community and key stakeholders. It meets monthly to advise on desired outcomes and provide feedback on corporate initiatives. All service providers must demonstrate customer service processes as part of their operating licences.

Regular market research is conducted to determine levels of satisfaction and priority issues for customers. Research is also conducted to determine customer attitudes on various issues such as water quality, water conservation, water restrictions, pricing alternatives, alternative treatment and disposal options.

All significant supply augmentation projects incorporate community consultation as part of the project management process. Value Management Studies are held, involving community representatives to determine “best value” solutions. Public meetings are also held in local communities to discuss relevant issues such as local wastewater treatment and disposal options.

In relation to pricing, all significant sewerage and water business tariff reforms have involved consultation with key stakeholders from business and community groups. The Customer Advisory Council and market research are used to provide feedback on reforms as they relate to residential customers. The Corporation meets regularly with representatives from the land development industry to discuss water supply policy changes which have impacts on land development.

Public Education Programs

Western Australia is a dry state, under pressure to develop new water sources to match population growth, so there is considerable investment in public education and conservation campaigns.

The Water and Rivers Commission effectively determines the level of education provided by setting per capita targets with service providers. Principles for water use efficiency have been agreed in an Operating Partnership Agreement and specific targets are set out in the in the operating strategies developed to accompany water allocation licences. There are currently targets in place that cover 82% of the population.

The service providers set the level of communication and education each year, on the basis of water availability and demand. In Western Australia, there is a Water Resource Planning Executive Steering Committee including representatives from the Water Corporation and Water and Rivers Commission that meets monthly to discuss supply and demand management issues, including communication plans.

Advertising, internet advice, brochures, school education and water use calculators all provide suggestions to customers on how to reduce their water use. The Water Corporation has made a significant investment in a study of 600 households to evaluate domestic water use practices. This will contribute to future demand management programs.

In Western Australia, awareness of the need to conserve water is exceptionally high (90 - 95%) and many of the options for reducing consumption (eg. water efficient appliances, reticulation, waterwise garden design) within households have now been adopted. The hot, dry summer of 1999/2000 is an example of where public information on water shortages led to a significant contraction in community demand as a result of a "call to action".

Whilst a potential conflict of interest is perceived in service providers providing education, there are incentives within the process for service providers to manage water conservation in a responsible manner. These include, per capita targets attached to licence allocations, deferment of the development of more expensive new sources, public approval for "good citizenship" and joint committees that monitor demand management. The success of these incentives can be substantiated with outcome-based evidence, as per capita consumption is falling in accord with targets.

The Western Australian Water Education Steering Committee, comprised of representatives from government and service providers, meets quarterly to coordinate significant activities and promote a high level of public education in water resource issues.

The Water Corporation has been awarded a major national environmental education award - the "Banksia Environmental Foundation's Education and Training Award" for its Waterwise schools program for primary and secondary students. In addition to providing standard school curriculum materials, excursions and Internet tools the program encourages schools to undertake

projects that involve local environmental groups, public sector agencies, industry and local government.

Water agencies, including Water & Rivers Commission and the Water Corporation, work with tertiary institutions, including universities and TAFE to encourage the development of research and education that will advance water issues (eg. water audit courses), particularly in relation to the environment.

5.2 Gas

Western Australia's vast hydrocarbon resources are an essential part of its economy and are vital to its national and international competitiveness. Domestically, industrial and commercial users already enjoy the advantages provided by competitively priced natural gas. Some 95% of domestic gas is consumed by large industrial and commercial users. The State's industrial development prospects, into areas of resource processing and value added activity, are greatly enhanced by reforms that have brought increased competition to the gas industry.

5.2.1 The COAG Agreements on Natural Gas Reform

As outlined in the NCC's NCP Third Tranche Assessment Framework, reform parameters for the natural gas industry were established by COAG at a series of meetings in the early 1990's, culminating in the 1994 agreement to implement free and fair trade in gas.

The 1995 Competition Policy Agreements brought gas reforms within the NCP framework. The 1997 Natural Gas Pipelines Access Agreement provided additional scope to the reform process and formalised expectations.

Western Australia has implemented a broad range of structural reform initiatives in the gas industry to ensure a competitive market conducive to private investment. These initiatives have included disaggregation of the major domestic gas supply contracts, separation and corporatisation of the former State-owned gas and electricity utilities, structural separation of the gas transmission and distribution functions, and privatisation of the separate state-owned transmission and distribution systems. These initiatives have been reported in section 3.2 dealing with Structural Reform of the Gas Industry.

The other major commitments in implementing free and fair trade in gas relate to implementing a nationally consistent regime for access to gas pipelines; retail contestability timetables; derogations and transitional arrangements; and licensing and franchising principles. Western Australia's progress on these and other issues is reported below.

5.2.2 Access to Natural Gas Transmission and Distribution Pipelines

Western Australia is a signatory to the 1997 intergovernmental Natural Gas Pipelines Access Agreement. The *Gas Pipelines Access (Western Australia) Act 1998* gave effect to the 1997 Agreement by enacting the National Third Party Access Code for Natural Gas Pipeline Systems under Western Australian law. The Act incorporates the transitional measures and derogations set out in the 1997 Agreement.

The Act established an Independent Gas Pipelines Access Regulator, an independent Gas Disputes Arbitrator to hear disputes between parties; and a Gas Review Board to hear appeals against the Regulator's or relevant Minister's decisions under the Code.

Western Australia applied for certification of the access regime as an effective regime under Part IIIA of the *Trade Practices Act 1974* in March 1999. Following a favourable recommendation by the NCC, the Commonwealth Minister for Financial Services and Regulation certified the regime as effective in May 2000.

A number of proposed Access Arrangements for pipelines covered by the Code have been lodged with the Gas Pipelines Access Regulator for approval. The Regulator in each case reviews the proposal and conducts a public submission process to make an informed decision whether to approve or request amendment to the Arrangement.

The Regulator also enforces the ring-fencing arrangements of the Code.

Significant decisions made by the Regulator thus far include approvals of Access Arrangements for the AlintaGas mid-west and south-west distribution system and the Parmelia transmission pipeline.

Significant matters remaining with OffGAR include the Access Arrangements for the Dampier to Bunbury Natural Gas Pipeline, and the Goldfields Gas Transmission Pipeline, for which draft decisions are expected early in 2001.

5.2.3 Transitional Arrangements and Derogations

The NCC's assessment framework contains the following explanation with respect to gas related Transitional Arrangements and Derogations:

Clause 12 of the 1997 Gas Agreement sets out COAG's agreement in respect of derogations. Derogations are listed in Annex I to the Agreement. Under clause 12.1, derogations are permitted only if they are specifically identified in a jurisdiction's gas pipelines access legislation or other appropriate legislation, and have been approved by all Ministers. Clause 12.2 provides that derogations are to be limited to those essential to the orderly introduction of competitive

arrangements, and except as provided in Annex I, are to end no later than September 2001.

The key derogations from the Code for Western Australia relate to the State enacting its own complementary legislation and retaining sovereign responsibility for regulation of natural gas, reflecting the reality that the gas industry is currently confined within state boundaries.

A number of derogations therefore relate to vesting Code functions in relevant State Ministers and regulatory, appeals and judicial bodies. This situation is to be reviewed in the event that a significant transmission pipeline delivering gas to/from another State or Territory is constructed or five years from the date Western Australia signed the agreement, whichever is the earlier.

Other derogations concerning the deemed compliance of transitional access regimes are only temporarily relevant with access matters regulated under the Code from 1 January 2000. Where relevant, transitional arrangements will continue until the Regulator approves a final access arrangement under the Code.

A number of other derogations are due to expire in 2002. These include:

- existing distribution franchises and licensing arrangements are to be retained until 1 July 2002;
- ring-fencing of the gas distribution and trading activities of AlintaGas in respect of the Mid and South West distribution system, were to be introduced by 1 July 2002 (see below); and
- full retail contestability is scheduled to commence from 1 July 2002.

During the sale of AlintaGas, the previous Government decided to bring forward the application of the Code's ring-fencing provisions to the AlintaGas' Mid and South West distribution system. Accordingly, from 17 December 2000, the date of sale completion, AlintaGas has been subject to the ring-fencing provisions of the Code.

Western Australia has not legislated derogations or transitional measures going beyond those contained in Annex I of COAG's 1997 Gas Agreement.

5.2.4 Contestability Timetables

Western Australia is committed to implementing full retail contestability in accordance with its original preferred timetable, agreed by jurisdictions as part of the 1997 Agreement. The *Gas Pipelines Access (WA) Act 1998* sets out Western Australia's timetable for third-party access to the AlintaGas distribution system.

There has been a further lowering of the contestability thresholds since the NCP second tranche assessment. From 1 January 2000, any gas customer taking at least 100 TJ per year through a single metered connection to the gas distribution system or the DBNGP pipeline system is able to contract directly with any gas supplier.

From 1 January 2002 the threshold will be further lowered to one TJ per year, and full retail contestability is scheduled to commence from 1 July 2002, permitting any gas customer to contract directly with any gas supplier.

In preparing for full retail contestability, Western Australia will be mindful of the systems implemented in other jurisdictions and considers consistency in regulation to be important. Participation in the gas policy forum will assist in this regard.

5.2.5 Reform of Regulatory Barriers to Competition

Legislation Review

The NCC has requested information in regard to a number of legislation reviews of Western Australian legislation relevant to the natural gas industry. A summary of the progress and relevant outcomes from these reviews is provided in the table below. In the case of petroleum pipelines and petroleum titles, relevant legislation may also be administered by the Minister for State Development and in such cases, further discussion appears in the section dealing with Mining. Additional information is contained in the general section dealing with legislation reviews at Attachments 1 and 3.

Legislation	Update on Legislation Review
<i>Dampier to Bunbury Pipeline Regulations 1998 (WA)</i>	Repealed 1 January 2000.
<i>Energy Operators (Powers) Act 1979 (WA)</i>	Removal of restrictions on LPG trading removed through AlintaGas sale legislation.
<i>Gas Corporation Act 1994 (WA)</i>	Repealed 17 December 2000.
<i>Gas Transmission Regulations 1994 (WA)</i>	Repealed. Access and related matters now regulated according to the National Third Party Access Code for Natural Gas Pipeline Systems.
<i>Mining Act 1978 (WA)</i>	Review complete. Minor restrictions found to be in the public interest. Royalty provisions to be considered in a separate (non-NCP) Royalty Review.
<i>North West Gas Development (Woodside) Agreement Act 1979 (WA)</i>	Repealed and replaced by 1994 Act of same name (see next entry).
<i>North West Gas Development (Woodside) Agreement Amendment Act 1994 (WA)</i>	Despite existence of restrictions, sovereign risk prevents unilateral amendment or repeal.
<i>Petroleum Act 1967 (WA)</i>	Review to be conducted after outcome of Petroleum Submerged Lands legislation finalised.

<i>Petroleum (Submerged Lands) Act 1982 and Regulations (WA)</i>	National review complete. Endorsed by ANZMEC Ministers. Amendments to be developed by Commonwealth mid 2001 with State and Territory mirror legislation.
<i>Petroleum Pipelines Act 1969 and Regulations (WA)</i>	Review complete. Minor amendments will follow. Common carrier provisions to be considered following P(SL)A Review (upstream access issue).

Upstream Barriers

Western Australia supports the implementation of sound acreage management principles which are necessary to promote private investment in exploration and commercial extraction of the State's vast resources. Following completion of the review of the Petroleum (Submerged Lands) legislation, Western Australia will be considering the recommendations as they pertain to offshore and onshore petroleum titles arrangements.

Western Australia has participated in the national review of the Petroleum (Submerged Lands) legislation. The review's final recommendations are yet to be considered by the Western Australian Government.

Franchising

Effective implementation of COAG's 1997 Gas Agreement requires jurisdictions to give effect to certain franchising principles dealing with the sale of gas and laying of pipelines. These principles generally ensure that effective opportunities are available for new entrants to gain contestable customers.

AlintaGas' exclusive distribution franchise will expire on or before 1 July 2002 in accordance with agreed transitional arrangements in Annex I of the 1997 Agreement.

The matter of adherence to franchising principles therefore does not appear relevant to Western Australia's third tranche assessment given the NCC's discussion in respect of AlintaGas' retail/commercial customer franchise in the Kalgoorlie-Boulder region.

Licensing

The 1997 Agreement also requires implementation of licensing principles regarding the construction and operation of new natural gas pipelines.

Gas pipeline licensing in Western Australia generally falls under one of three Acts: the *Petroleum (Submerged Lands) Act* (Cwth or WA as applicable); the *Petroleum Pipelines Act 1969*; or the *Energy Coordination Act 1994*. These acts have or are being reviewed and the relevant provisions are consistent with the COAG agreed licensing principles.

Other legislation and regulations pertaining to gas safety, gas quality, gas specifications, licensing of pipelines, licensing of gas appliances and consumer protection have been examined for restrictions on competition and have been found not to have any anti-competitive effect. No complaints have been received by Treasury's Competition Policy Unit.

A recent review of the *Petroleum Pipelines Act 1969* and *Petroleum Pipelines Regulations 1970* considered a range of minor restrictions on competition. Generally the restrictions (licensing provisions and restrictions on what substances may be conveyed) were found to be necessary to meet legitimate environmental and public safety concerns. The Act also contains some access/common carrier provisions that are intended to be reconsidered following the outcomes of the national review of similar provisions under *Petroleum (Submerged Lands)* legislation. The review recommended that a minor restriction that lead to differential treatment between public and private bodies be removed. This was accepted by the previous Government.

The *Energy Coordination Act 1994* now includes a gas licensing system that provides for the regulation of companies operating distributions systems and otherwise supplying gas to small use customers (below 1 TJ per annum). The independent review of the relevant amending Bill and remaining provisions found the licensing framework to contain minimal restrictions on competition and to be the most cost effective means of achieving the objectives of protecting small use customers. The review also led the Government to implement some improvements to the regulatory framework, including a requirement for the decision making bodies to consider the public interest in exercising the regulatory discretion contained within the Act, and the establishment of an independent appeals process by the Gas Review Board.

Industry Standards and Safety

In Western Australia, standards relating to gas quality, gas specifications and licensing of gas appliances comes under the following legislation and regulations:

- *Energy Coordination Act 1994*;
- *Gas Standards Act 1972*;
- *Gas Standards (Gas Fitting and Consumer Gas Installations) Regulations 1999*;
- *Gas Standards (Gas Supply and System Safety) Regulations 2000*; and
- *Petroleum Pipelines Act 1969*.

In addition to being broadly bound by regulation, the competitive implications of gas quality and physical specifications are a matter considered by the Independent Gas Pipelines Access Regulator in deciding whether to approve an access arrangement for pipelines covered under the Code. The public processes involved would mean that any concerns about specifications posing barriers to entry would be publicly aired and subject to independent scrutiny.

Gas safety regulation in Western Australia derives from the *Petroleum Pipelines Act 1969* (for pipeline design pressures greater than 1.9 MPa) and the *Gas Standards Act 1972* (for pipeline design pressures less than 1.9 MPa). AS2885 applies for pipeline design pressures between 200 KPa and 1.9 MPa.

The Gas Standards Act enables the Gas Standards (Gas Supply and System Safety) Regulations 2000 which establish a framework of standards for pressure, metering, distribution system safety and gas plant safety. An important feature is the opportunity for independent review of regulatory decisions.

The Gas Standards (Gas Fitting and Consumer Gas Installations) Regulations 1999 establish a framework of licensing and standards for gas fitting work and gas appliances, meters and cylinders.

These regulations were developed in close consultation with industry and scrutinised by the Western Australian Parliament's Standing Committee on Delegated Legislation. Both sets of regulations implement a number of widely used codes and standards, including AS 2885.

Western Australia is currently reviewing the regime applying to gas fitters as part of a broader review of occupational licensing.

The obligation to vet any new legislation, regulations or ordinances under clause 5 of the CPA will ensure that the transition to full retail contestability does not give rise to unwarranted restrictions on competition.

Consumer Protection

Western Australia has broadly adopted the Australian Gas Association's standard code of practice for small use customers. In addition, licence conditions imposed upon AlintaGas and Wesfarmers under the Energy Coordination Act ensure that a standard contract forms the basis of transactions with small use customers.

The issue of the manner and appropriate degree of consumer protection may warrant further consideration in the implementation of full retail contestability.

5.3 Electricity

Western Australia continues to take very seriously its need to ensure ongoing electricity reform despite not being able to participate in the national electricity market. The significance to Western Australian industry and the wider economy of lower electricity costs, is clearly recognised.

Western Australia is encouraging competition through increasing the number of contestable customers, providing access to the transmission and distribution systems, and promoting private sector involvement in the industry.

As reported in section 3.4, the new Government's election commitments included considering major structural reforms and associated reviews of how the Western Australian electricity industry is regulated.

Under its legislation review program, Western Australia has reviewed a range of statutes and regulations pertaining to the electricity industry. These are reported in Attachment 1.

Highlights of the legislation review program include:

The former Government deciding upon the complementary approaches of ring-fencing and regulated access as an appropriate mitigation of Western Power's monopoly power in the circumstances.

Progressive removal of Western Power's exclusive franchise as open access has been made available to its transmission network since 1997 and to its distribution network in a series of steps from 1998. This was consistent with the former-Government's policy of ensuring competition was introduced in an orderly fashion without undue risk to system stability.

Lower contestability thresholds for regional and remote systems and for customers on the interconnected networks taking supply from renewable energy sources.

Consideration of the public power procurement process to facilitate a non-discriminatory bidding environment for the private sector where significant new generation plant is required.

Removal of a number of minor residual restrictions of a competitive neutrality nature. Western Power continues to be subject to a number of enhanced accountability provisions that both seek to emulate relevant provisions of the Corporations Law and apply the Government's general GTE accountability framework. It is also subject to a Ministerial power of direction; a requirement to obtain Ministerial approval for certain transactions.

5.4 Road Transport

5.4.1 Second Tranche Reforms

Western Australia is committed to the adoption of the package of road transport reforms agreed to by the Australian Transport Council as required under the Agreement to Implement National Competition Policy and Related Reforms.

Reforms allowing the "fee free" conversion of Interstate Drivers Licences were fully implemented in 2000 with the passing of amendments to the *Road Traffic (Drivers' Licensing) Regulations*. The amendments were introduced in 2000 as were further amendments to the *Road Traffic Act* that will enable much of the implementation of the National Drivers Licence Scheme to commence operation on 7 May 2001.

Another two amendment bills to Western Australia's *Road Traffic Act 1974* and supporting regulations need to be passed and promulgated respectively to complete Western Australia's commitments. These Bills were in the parliament prior to it being prorogued and subject to the approval of government will be reintroduced to Parliament in 2001.

5.4.2 Third Tranche Reforms

The NCC has not finalised the Third Tranche Assessment Framework for road transport reforms. The attachment entitled 'Proposed national road transport reforms - third tranche assessment framework' has been drafted on the basis of the proposed framework.

Attachment 6 entitled 'Progress on national road transport reforms includes detail of the second and third tranche assessment framework and the status of implementation for the road transport reforms.

6 ACCESS

The Western Australian Government remains committed to access to services provided through significant infrastructure facilities, where appropriate, because it enhances the competitiveness of Western Australian businesses and will generate savings to consumers and small businesses. Access on reasonable terms to the services of gas pipelines and transport facilities, for example, is important in development of the State's vast but isolated oil, gas and mineral reserves.

In January 2001, Western Australia provided a detailed submission to the Productivity Commission inquiry into the national access framework. The submission recognised the importance of access regulation in promoting economic activity and increasing efficiency of production, and accepted the merits of having both the generic access framework in Part IIIA of the *Trade Practices Act 1974* and various industry-specific regimes.

Access, at the correct price, permits competition to emerge in markets that rely on monopolistic providers for key business inputs. The benefits of competition can include lower prices for business and household consumers, improved export competitiveness, and overall improvements in the allocation of scarce resources.

Access regulation should seek to balance investment incentives and reasonable returns to the provider against the broader social and economic benefits of reducing the scope for monopoly pricing and increasing competition. There is some scope to improve the Part IIIA framework so as to provide greater certainty in its application and ensure that incentives to invest in key infrastructure industries are not distorted.

The State's gas pipelines access regime has been operating since February 1999, and was certified by the Commonwealth in May 2000 as an effective regime under Part IIIA of the *Trade Practices Act*. This regime, and the access regime applying to electricity, are discussed in more detail in the gas and electricity sections of the Related Reforms chapter.

In the electricity industry, the Government's pre-election policies include to further reduce the usage thresholds at which access to the distribution network is made available to service contestable customers. Access to the transmission network has been open since 1997. Lower contestability thresholds apply in respect of off-grid regional locations and for energy supplied from renewable sources. The services provided by Western Power's transmission and distribution networks in the South West Interconnected System are currently the subject of an application for declaration under Part IIIA of the *Trade Practices Act*.

6.1 Rail

Western Australia has established a rail access regime, designed to provide a uniform framework for the negotiation of access to rail services provided by the major railways in the State's rail network. The regime will commence upon the appointment of the Independent Rail Access Regulator, which is expected by mid 2001.

The rail freight network subject to the regime was owned by the Government agency, Westrail, until its lease to the Australian Railroad Group in late 2000. Section 3 above reports on the structural reform review undertaken prior to sale. The urban passenger rail network which is also subject to the regime continues to be owned and operated by the Government. The access regime does not cover other privately owned railways such as the iron ore railways in the Pilbara.

The WA Rail Access Regime consists of the Railways (Access) Code 2000, made under the *Railways (Access) Act 1998*. The Premier submitted the Act and proposed Code to the National Competition Council (NCC) for certification as an effective rail access regime in February 1999.

As part of the State's application to the NCC to certify the WA access regime for rail services, the Code underwent two national public consultation processes as part of the NCC's assessment. Among the submissions received and considered were those from the Productivity Commission, Australian Competition and Consumer Commission, Commonwealth Department of Transport, Australian Rail Track Corporation, Freightcorp, Australian Wheat Board, WA Chamber of Minerals and Energy, National Rail, Specialized Container Transport, Toll Group and Western Mining Corporation. Consultations on the content of the Code was also held with the WA Rail Advisory Council comprising senior representatives from key stakeholders.

These national and State consultation processes raised many issues concerning the detailed content of the Code, and the Code underwent significant amendments to address the concerns raised, including the establishment of the office of an independent rail access Regulator. There is now broad agreement among the parties within WA on the Code.

At the national level, the NCC also considers that the Code constitutes a robust set of access arrangements for rail infrastructure owners and users. However, there is a remaining issue which from the NCC's perspective is a barrier to certification. This issue relates to nationally consistent access arrangement for interstate operators which both the NCC and the State agree cannot be resolved satisfactorily at this time, leading to the State withdrawing its application for certification in October 2000.

7. LOCAL GOVERNMENT

Western Australia continues to meet its clause 7 commitments for the application of the Competition Principles Agreement to local government. Western Australia's local governments have been active in pursuing reforms through both competitive neutrality reviews and the review of local laws to meet their National Competition Policy (NCP) obligations.

Western Australia allocated a proportion of its competition payments to a Local Government Development Fund in the 1998/99 Budget, demonstrating the State's commitment to local government's implementation of NCP. The following two budgets have both allocated a similar proportion of funds (\$1.8m in 2000/01) to this Fund. This has helped local governments address a range of issues including further structural reform, improved efficiency and increased accountability.

While the implementation of NCP has resulted in many competitive neutrality and local law reforms, in some cases it has been found not in the public interest to implement reforms. This reflects the situation in Western Australia where both local governments and their business enterprises are generally small and isolated from larger markets. As a consequence the circumstances may not be conducive to the introduction of competition.

7.1 Local Law Review

A majority of local governments have fully met their obligation to review and, where necessary, amend their local laws by 31 December 2000. To date this process has resulted in an average of eleven restrictive local laws being repealed and 2 restrictive local laws being amended per local government.

Details of the review programmes have been documented in the Annual Reports of each local government.

Most of the local governments that have not yet fully met local law review obligations have completed the majority of their review program. The Department of Local Government is monitoring the progress of the outstanding reviews to ensure their prompt completion.

7.2 Competitive Neutrality Reviews

Thirty five local governments identifying business activities requiring competitive neutrality reviews have now completed these reviews. More than half of the local governments found that it was in the public interest to apply the principles of competitive neutrality to at least one of their businesses. Competitive neutrality is being implemented primarily through adopting full cost pricing to their business activities.

Most local governments found that they had no significant business activities, and therefore did not need to conduct competitive neutrality reviews. This is not unexpected when it is noted that the scale of operation of many local government activities in Western Australia is small.

Most of the reviews conducted focused on activities likely to be susceptible to private competition like community recreation centres; waste disposal activities; aged and child care centres and regional airports.

Where competitive neutrality was found not in the public interest, the reason was most commonly that local government had a strong social objective, which could not be met by other means.

7.3 Competitive Neutrality Complaints Process

Western Australia has in place an effective competitive neutrality complaints mechanism for local government. The mechanism involves a complaint secretariat in the Department of Local Government investigating the complaint prior to the Minister for Local Government making a final determination. In other respects the procedures are similar to the mechanism described in section two for the State Government.

There have been three valid competitive neutrality complaints made against significant local government businesses within Western Australian that are currently being investigated. Two of the complaints originated from a private health club owner, and were directed against Council recreation centres in the Cities of Swan and Bayswater. The remaining complaint, also from a health club owner, was made against the City of Kalgoorlie-Boulder. The complaints relate to the local government business having:

- exemptions from Commonwealth, State and Local taxes and charges;
- no requirements to return a commercial rate of profit;
- access to corporate overheads free of charge; and
- advantages associated with access to cheaper capital financing and land at no cost.

The investigations are still underway. It is anticipated that the secretariat's report will soon be presented to Government.

8. CODE OF CONDUCT

Western Australia has met its core obligation under the Conduct Code Agreement (CCA) by implementing the schedule version of Part IV of the *Trade Practices Act 1974* (TPA) through its enactment of the *Competition Policy Reform (Western Australia) Act 1996*.

Since that time, Western Australia has continued to comply with the CCA by notifying the Australian Competition and Consumer Commission (ACCC) of any statutory exceptions occurring in Western Australian legislation to the application of Part IV of the TPA. The exceptions have effect under Commonwealth law due to the operation of section 51(1) of the TPA.

Western Australia has notified the ACCC, in accord with clause 2(3) of the CCA, that Western Australia had one law which existed as of 11 April 1995 and continued to provide exemption from the application of the *Trade Practices Act 1974* beyond 20 July 1998. The statutory exception is contained in clause 42 of the Agreement set out in the Schedules to the *North West Development (Woodside) Agreement Act 1979* and was introduced by the *North West Gas Development (Woodside) Amendment Act 1994*.

Western Australia subsequently notified the ACCC, in accordance with clause 2(1) of the CCA, of a further statutory exception introduced into the *North West Development (Woodside) Agreement Act 1979* as clause 41A of the Agreement by the *North West Gas Development (Woodside) Agreement Amendment Act 1996*.

Western Australia continues to be an interested participant in the consultative mechanisms set out in clauses 4 and 6 of the CCA, relating respectively to appointments to the ACCC and to amendments affecting the operation of Part IV of the TPA.

ATTACHMENT 1:

Summary of Completed Legislation Reviews of Existing Legislation.

ABORIGINAL AFFAIRS PLANNING AUTHORITY ACT 1972 AND REGULATIONS

Terms of Reference: As per clause 5(9) of the Competition Principles Agreement

Conducted by: Aboriginal Affairs Department

Consultation: Intra-agency and inter-agency consultation

Status: Endorsed by the previous Government 1997

SIGNIFICANT RESTRICTIONS

Restrictions:

- Access to Aboriginal lands is restricted
- Provision of finance for Aboriginal enterprises which enables finance to be provided to Aboriginal enterprises through the Aboriginal Trading fund, which may have competitive advantages over private sector lenders.

Public interest assessment:

Both restrictions protect the residents of Aboriginal Lands and enable support for Aboriginal enterprises that could reduce reliance on welfare and other transfer payments. The costs are estimated to be minimal, but achieve significant public benefits.

Recommendation:

To retain the restrictions.

OUTCOME

The previous Government endorsed the recommendations of the review and no changes were made to the Act.

ABORIGINAL COMMUNITIES ACT 1979 AND BY-LAWS

Terms of Reference: As per clause 5(9) of the Competition Principles Agreement

Conducted by: Aboriginal Affairs Department

Consultation: Intra-agency and inter-agency consultation

Status: Endorsed by the previous Government 1998

SIGNIFICANT RESTRICTIONS

Restriction:

Section 7(1) empowers a community to which the act applies to make by-laws relating to the community lands of that community for or with respect to:

- the prohibition or regulation of the admission of persons, vehicles and animals to the community lands or a part of the community lands; and
- the prohibition, restriction or regulation of the possession, use or supply of alcoholic liquor or deleterious substances.

Public interest assessment:

The effects of the restrictions have been identified and analysed well, given that they are minor restrictions. Quantitative estimates have been made with respect to some of the effects. The effects on the general economy are not significant. Non-legislative alternatives were considered, but it is considered that the provision of powers to Aboriginal communities to regulate access to community lands is necessary and that no less restrictive means are available to fulfil the purpose of the act and maintain the level of public benefit.

Recommendation:

To retain the powers of the communities to regulate access and the availability of deleterious substances on the grounds of public health and cultural preservation.

OUTCOME

The previous Government endorsed the recommendations of the review and no changes were made to the act.

ABORIGINAL HERITAGE ACT AND REGULATIONS 1974

Terms of Reference: As per clause 5(9) of the Competition Principles Agreement

Conducted by: Aboriginal Affairs Department

Consultation: Intra-agency and inter-agency consultation

Status: Endorsed by the previous Government 1997

SIGNIFICANT RESTRICTIONS

Restriction:

Access to Aboriginal lands containing protected sites is restricted.

Public interest assessment:

The restriction protects the cultural heritage of the State and ensures that sites of historical and cultural significance are not damaged or destroyed.

Recommendation:

The restrictions on competition contained in the legislation are in the public interest and should be retained.

OUTCOME

The previous Government endorsed the recommendations of the review and no changes were made to the Act.

ADMINISTRATION ACT 1903 AND REGULATIONS

Terms of Reference:	As per clause 5(9) of the Competition Principles Agreement
Conducted by:	Ministry of Justice
Consultation:	Submissions were invited directly from interested parties
Status:	Endorsed by the previous Government 1997

SIGNIFICANT RESTRICTIONS

Restriction:

The Act treats natural persons differently from other classes of administrators of intestate estates as regards a requirement to obtain surety.

Public interest assessment:

The restriction has no costs, but provides benefits by placing natural person administrators on a level playing field with other classes of administrators. It does so because other administrators are already subject to similar safeguards to protect deceased estates, by other means.

Recommendation:

To retain the restriction, found to be in the public interest.

The review also recommended:

- Broadening the range of financial institutions covered by a provision that grants them protection to pay funds from a deceased estate, up to a maximum amount, for funeral or other authorised purposes prior to administration of the estate.
- Making this maximum amount consistent with corresponding provisions of the Financial Institutions Code (Western Australia)

OUTCOME

The previous Government endorsed the recommendations of the review. Drafting instructions are being prepared to include the recommended amendments in the proposed *Acts Amendment (Competition Policy) Bill 2001*.

AGRICULTURAL PRODUCTS ACT 1929

AGRICULTURE ACT 1988

AGRICULTURE PROTECTION BOARD ACT 1950 AND REGULATIONS

AGRICULTURE AND RELATED RESOURCES PROTECTION ACT 1976 AND REGULATIONS

ARTIFICIAL BREEDING OF STOCK ACT 1965 AND REGULATIONS

BEEKEEPERS ACT 1963 AND REGULATIONS

SEEDS ACT 1981 AND REGULATIONS

SOIL AND LAND CONSERVATION ACT 1945 AND REGULATIONS

STOCK DISEASES (REGULATIONS) ACT 1968 AND REGULATIONS

STOCK (IDENTIFICATION AND MOVEMENT) ACT 1970 AND REGULATIONS

WILD CATTLE NUISANCE ACT 1871 (THE)

Terms of Reference: As per clause 5(9) of the Competition Principles Agreement

Conducted by: Minister for Primary Industry

Consultation: Inter and Intra-Agency consultation

Status: Endorsed by the previous Government
December 2000

SIGNIFICANT RESTRICTIONS

Restrictions:

- restrictions related to the control of pests and diseases;
- registration provisions for beehives and other disease control measures in the beekeeping industry;
- soil conservation notices;
- land clearing and drainage controls.

Public interest assessment:

The effects of the restrictions on competition were adequately considered and the conclusions follow logically from the analysis. The above restrictions are easily justified as being in the public interest .

Recommendation:

To retain the above restrictions.

Restrictions:

- regulations on packing and sale of agricultural products to be replaced by regulations on labelling;
- restrictions on artificial breeding including the licensing provisions, restrictions on premises and restrictions on the importation of genetic material;
- restrictions on seeds and replacement of these with National Standards when they are endorsed by the Standing Committee on Agriculture and Resource Management (SCARM);
- the redundant Wild Cattle Nuisance Act 1871

Public interest assessment:

The effects of the restrictions on competition were adequately considered and found that those above restrict the industry unnecessarily and need to be removed.

Recommendation:

To repeal all of the above restrictions.

Restrictions:

- restrictions on the quality standards of honey;
- stock identification and movement restrictions; and
- spraying regulations.

Recommendation:

To amend, by drafting new legislation, the above restrictions. In particular, to remove stock identification restrictions as they apply to horses, to replace honey quality standards with voluntary quality assurance and to remove restrictions on spraying except those related to the control of use.

OUTCOME

The previous Government endorsed the recommendations of the review.

ATTACHMENT

Legislation	Restrictions	Recommendation
Agricultural Products Act 1929	Regulates the packing and sale of agricultural products.	Repeal all codes and replace with regulations on labelling.
Agriculture Act 1988	No restrictions.	No change.
Agriculture Protection Board Act 1950	No restrictions.	No change.
Agriculture and Related Resources Protection Act 1976	<ol style="list-style-type: none"> 1. Restricts importation of some plants or animals; 2. Requires landholders to control pests and diseases; 3. Spraying regulations; 4. Raises rates on pastoral land; and 5. Restricts the storage of agricultural chemicals. 	<p>Spraying regulations to be repealed although powers to control use will be retained.</p> <p>Other restrictions to be retained.</p>
Artificial Breeding of Stock Act 1965	<ol style="list-style-type: none"> 1. Restricts premises for supplying semen and other reproductive material; 2. Licenses artificial breeders; and 3. Restricts the importation of reproductive material. 	<p>Repeal all restrictions</p> <p>Include new less restrictive regulations on control of diseases</p> <p>Voluntary licensing of artificial breeder.</p>
Beekeepers Act 1963	<ol style="list-style-type: none"> 1. Requires registration of all beekeepers and branding of hives; 2. Prevents exotic diseases through restrictions on importation, antibiotic use and testing; and 3. Imposes standards on honey. 	<p>Retain all restrictions except to reconsider those relating to honey standards and nuisance provisions which will be considered under the new Agriculture Management Bill.</p>
Seeds Act 1981	<ol style="list-style-type: none"> 1. Requires seeds to homogenous 2. Labelling requirements; and 3. Prohibits sale of seeds with weed contamination. 	To be repealed subject to the endorsement of National Standards
Soil and Land Conservation Act 1945	<ol style="list-style-type: none"> 1. Soil Conservation Notices; 2. Rates and service charges; 3. Clearing controls; and 4. 90 day notice to clear or drain land. 	No change.
Stock Diseases (Regulations) Act 1968	<ol style="list-style-type: none"> 1. Restricts importation of stock on grounds of disease control; and 2. Requires stockholders to control and notify of diseases. 	No change.
Stock (Identification and Movement) Act 1970	<ol style="list-style-type: none"> 1. Branding of human food and fibre producing animals; and 2. Documentation when moving stock. 	Some scope for easing restrictions on horse owners.
Wild Cattle Nuisance Act 1871 (The)	<ol style="list-style-type: none"> 1. Regulates the destruction of wild cattle but is redundant. 	Repeal the Act.

**ANGLO-PERSIAN OIL COMPANY LIMITED (PRIVATE) ACT
1919**

**BRITISH IMPERIAL OIL COMPANY LIMITED (PRIVATE)
ACT 1925**

**COMMONWEALTH OIL REFINERIES LIMITED (PRIVATE)
ACT 1940**

**SOUTH FREMANTLE OIL INSTALLATIONS PIPE LINE ACT
1948**

**TEXAS COMPANY (AUSTRALASIA) LIMITED (PRIVATE)
ACT 1928**

Terms of Reference: As per clause 5(9) of the Competition Principles Agreement

Conducted by: Department of Contract and Management Services

Consultation: Invitations for submissions to this review were issued to oil companies currently operating pipelines and distribution facilities in the Fremantle area, the City of Fremantle and the Fremantle Port Authority.

Status: Endorsed by the previous Government
October 1998

SIGNIFICANT RESTRICTIONS

Restriction:

The Acts define the relationships, rights and duties of oil companies, local government authorities and the Minister for Works in relation to the construction, operation and maintenance of pipelines on public lands. These duties and powers of the State and local governments constitute restrictions on the commercial activities of the oil companies.

Public interest assessment:

In general, the effects of the restrictions have been adequately considered and analysed. The review considered the effects of the legislation on the operation and maintenance, by different firms, of pipeline, storage and distribution works.

The analysis considered whether the legislation imposed any unnecessary or inappropriate constraints on firms in their management of these works. It also addressed whether the provisions of the Acts resulted in firms facing differential treatment in regard to their operation and maintenance of these works which had the potential for restricting competition between the firms in the supply of petroleum fuels and associated products.

It was assessed that the restrictions do not impose significant costs on the oil companies. Nor do any differences between the Acts impose cost advantages or disadvantages on particular oil companies that are of sufficient magnitude to affect competition between the companies.

The public benefits of these restrictions were assessed to be:

- Minor cost savings in management of municipal infrastructure arising from coordination in planning, construction and maintenance of municipal infrastructure and oil facilities;
- Minimisation of public inconvenience during construction and maintenance activities on public land; and
- Ensuring proper restoration of municipal infrastructure where this has been disturbed as a result of construction or maintenance activities by the oil companies.

The review considered three alternative mechanisms for regulation of construction, maintenance and use of pipelines on public lands.

- Repealing the Acts and bringing the pipeline activities within the ambit of the Petroleum Pipelines Act 1969;
- Repealing the Acts and replacing them with a single new act relating specifically to petroleum pipelines in the Fremantle area; and
- Repealing the Acts and relying on voluntary “good behaviour” by the oil companies.

None of these alternatives were considered to be in the public interest due primarily to the lack of potential benefits that would justify the costs of legislative change.

In view of the potential public benefits arising from the provisions of the Acts, and the absence of significant costs or effects on competition, it was concluded that the restrictions arising from the legislation are either in the public interest due to current or potential future benefits, or have no current or potential future impact.

Recommendation:

To retain the restrictions found to be in the public interest.

OUTCOME

The previous Government endorsed the recommendations of the review and no changes were made to the legislation.

ANATOMY ACT 1930 AND REGULATIONS

Terms of Reference: As per clause 5(9) of the Competition Principles Agreement

Conducted by: Health Department of Western Australia

Consultation: Intra-agency and inter-agency consultation

Status: Endorsed by the previous Government
14 August 2000

SIGNIFICANT RESTRICTIONS

Restriction:

The review found that the Act contained no restrictions that had any effect on competition so as to warrant assessment.

Recommendation:

To retain the Act in its present form.

OUTCOME

The previous Government endorsed the recommendation of the review. No legislative amendment is required.

ANIMAL RESOURCES AUTHORITY ACT 1981

Terms of Reference: As per clause 5(9) of the Competition Principles Agreement

Conducted by: Health Department of Western Australia

Consultation: Intra-agency and inter-agency consultation

Status: Endorsed by the previous Government
14 August 2000

SIGNIFICANT RESTRICTIONS

Restriction:

The review found that the Act contained no restrictions that had any effect on competition so as to warrant assessment.

Recommendation:

To retain the Act in its present form.

OUTCOME

The previous Government endorsed the recommendation of the review. No legislative amendment is required.

ART GALLERY ACT 1959

Terms of Reference: As per clause 5(9) of the Competition Principles Agreement

Conducted by:

Consultation: Due to the minor nature of the review, no consultation was necessary.

Status: Endorsed by the previous Government
18 December 2000

SIGNIFICANT RESTRICTIONS

Restriction:

The Act provides that works of art shall not be sold or exposed for sale in the Art Gallery or in any other places under the sole management and control of the Board. This imposes a discriminatory restriction on competition by not allowing private owners to sell works of art from the Gallery whilst allowing the Board to exempt governments or other art galleries from this provision.

Public interest assessment:

The intended effect of the restriction on the sale of artworks is to maintain the Gallery's status as the premier visual art collection and display institution and ensure that the Gallery is not diverted to overtly commercial operations. The restrictions on the sale of art works have minimal impact on those wishing to sell their artwork as the Art Gallery typically refers queries regarding the purchase of art works to the relevant owner. The proposed amendment would allow the Gallery some flexibility to sell artworks from its premises should the need or desire arise.

Recommendation:

To amend the Act to give the Board discretionary powers in the sale of artworks in the Art Gallery or in any other place under the management and control of the Board.

Restriction:

Regulations specifying the conditions and restrictions under which the public may be allowed to examine works of art in the Art Gallery and other places under the management and control of the Board.

Recommendation:

To retain the above provision.

OUTCOME

The previous Government endorsed the recommendations of the review.

BETTING CONTROL ACT 1954 AND REGULATIONS TOTALISATOR AGENCY BOARD BETTING ACT 1960

Terms of Reference:	As per clause 5(9) of the Competition Principles Agreement
Conducted by:	Minister for Racing and Gaming
Consultation:	<p>Invitations to make submissions to the review were made by written advice to persons and organisations with a known interest in the betting and gambling industries in addition to a public advertisement in <i>The West Australian</i> and the <i>Sunday Times</i>. Submissions to the review were received from the</p> <ul style="list-style-type: none">• Country Women's Association of Western Australia (Inc.)• Lotteries Commission of Western Australia• Western Australian Turf Club• Western Australian Bookmakers Association
Status:	Endorsed by the previous Government February 1999

SIGNIFICANT RESTRICTIONS

Restrictions:

Restrictions on competition arising from the legislation were of the following general types:

- Restrictions on events and prescription of circumstances under which betting may occur;
- Restrictions on persons and organisations able to conduct betting;
- Constraints and costs imposed on bookmakers and operators of totalisators generally;
- Constraints and costs imposed on racing clubs, authorities controlling racecourses and owners/occupiers of premises;
- Constraints and costs imposed on punters;
- Constraints and costs imposed specifically on the Totalisator Agency Board; and
- Competitive neutrality of the Totalisator Agency Board.

Public interest assessment:

The effects of the restrictions have been adequately considered and analysed. Assessment of costs and benefits of each individual restriction have been carried out in a robust and transparent fashion. Alternative means of achieving the legislative objectives were seriously considered for many of the identified restrictions.

Recommendations:

Of the 42 restrictions analysed in the review, the legislative provisions pertaining to 20 restrictions were recommended for repeal or amendment including:

- allowing sporting organisations to operate totalisators under similar rules as currently applying to racing clubs;
- allowing the Betting Control Board to authorise the sporting events on which the Totalisator Agency Board may conduct betting;
- allowing persons or organisations to be licensed to operate off-course totalisators;
- removing the provisions for the Betting Control Board to refuse an application for a bookmakers licence without specifying the reason for refusal;
- allowing the provision of bookmakers licences to corporations;
- allowing bookmaking to occur at anytime from a racecourse subject to the approval of the Betting Control Board and permission from the relevant racecourse controlling authority;
- allowing bookmaking to occur on ANZAC day;
- removing the limits on bets in the regulations, leaving the racing clubs to set limits as they see fit.
- removing the restriction on minimum levels of telephone bets with bookmakers;
- removing the restriction on placing totalisator bets on races held at other racetracks;
- removing the requirement for the Totalisator Agency Board and racing clubs to deduct commissions at prescribed rates from bets made on totalisators;
- removing the requirement for racing clubs to apply half of bookmaking levies retained (by the club) towards increasing stakes;
- removing the requirement for the Minister to approve the establishment of offices or totalisator agencies by the Totalisator Agency Board;

- removing the requirement that a racecourse be prescribed before bets may be placed with or received by the Totalisator Agency Board in relation to races conducted on that racecourse;
- removing the requirement for the Totalisator Agency Board to reserve 1.75% of totalisator pools from sports betting for promotion of sports events; and
- allowing bets to be made by any mechanism approved by the Totalisator Agency Board subject to any approved mechanism not involving the provision of credit by the Totalisator Agency Board or any employee of the Totalisator Agency Board.

The legislative provisions giving rise to the remaining restrictions were assessed as being in the public interest and recommended for retention.

OUTCOME

The previous Government endorsed the recommendations of the review.

BOXING CONTROL ACT 1987 AND REGULATIONS

Terms of Reference:	As per clause 5(9) of the Competition Principles Agreement
Conducted by:	Ministry of Sport and Recreation
Consultation:	Submissions were invited directly from interested parties.
Status:	Endorsed by the previous Government 1 October 1997

SIGNIFICANT RESTRICTIONS

Restriction:

Registration of boxers, trainers, promoters and judges. This restriction limits who can practice as a boxer, promoter or manager of boxers and ensures that the health of boxers is satisfactory.

Public interest assessment:

The restriction may reduce the number of participants from the sport and spectator numbers. However benefits associated with this regulation include improved boxer welfare; fewer serious injuries; reduced boxer health care costs; less litigation over claims of fraud and personal injury and a decline in the costs for promoters. On balance, the restriction is considered to be in the public interest.

Recommendation:

To retain the restrictions on competition found to be in the public interest.

OUTCOME

The previous Government endorsed the recommendations of the review.

BREAD ACT 1982 AND REGULATIONS

Terms of Reference:	As per clause 5(9) of the Competition Principles Agreement
Conducted by:	Ministry of Fair Trading
Consultation:	The views of the community were sought from stakeholders and the community. Stakeholders were formally notified of the review and public notices were placed in the Western Australian newspaper.
Status:	Endorsed by the previous Government 1998. Repeal legislation introduced to Parliament in 2000

SIGNIFICANT RESTRICTIONS

Restrictions:

The restrictions identified relate to restrictions on market entry, restrictions on delivery time for bread and requirements for marking vehicles delivering bread.

Public interest assessment:

Previous consultation undertaken has indicated support for repeal of parts of the Act. Resistance to repealing the section prescribing delivery times in the past was based on the rationale that the bread delivery times protected the interests of country bakers by preventing metropolitan based national bakeries taking over these markets.

In a number of cases, the provisions identified have become redundant because of the acquisition of regional bakeries by larger national bakeries. Also, exemptions have been granted for delivery times within the metropolitan area since 1995 and on application within the non-metropolitan regions since May 1997.

Recommendation:

That the Act be repealed.

OUTCOME

The previous Government endorsed the recommendations of the review. Legislation to repeal the Act, the *Acts Amendment and Repeal (Competition Policy) Bill 2000*, was introduced to Parliament on 24 May 2000.

BUSH FIRES ACT 1954 AND REGULATIONS

Terms of Reference:	As per clause 5(9) of the Competition Principles Agreement
Conducted by:	Fire and Emergency Services Authority
Consultation:	Intra-agency and inter-agency consultation
Status:	Endorsed by the previous Government August 1997

SIGNIFICANT RESTRICTIONS

Restriction:

Restriction on the lighting of fires and the requirement to maintain fire breaks. This restriction regulates the lighting of fires and requires the maintenance of fire breaks.

Public interest assessment:

This is a very minor restriction on competition. This restriction is clearly in the public interest as it reduces the likelihood of fires.

Recommendation:

To retain the restriction.

Restriction:

Requirement on local governments to provide firefighting equipment and insure voluntary firefighters.

Public interest assessment:

Firefighting equipment is essential in combating bush fires and protecting the community. The extremely high potential cost of fire damage means local governments must be prepared. Volunteer firefighters are also essential in protecting communities from bush fires and therefore it is in the public interest for government to provide insurance to those who voluntarily risk their lives to protect the community.

Recommendation:

To retain the above restriction.

The review also recommended that Government businesses be subject to fire control requirements.

OUTCOME

The previous Government endorsed the recommendations of the review. Legislation to amend the Act, the *Acts Amendment and Repeal (Competition Policy) Bill 2000*, was introduced to Parliament on 24 May 2000.

BUSINESS FRANCHISE (TOBACCO) ACT 1975

Terms of Reference: As per clause 5(9) of the Competition Principles Agreement

Conducted by: Department of Health

Consultation: Intra-agency and inter-agency consultation

Status: Endorsed by the previous Government 1997

SIGNIFICANT RESTRICTIONS

Restriction:

A licence is required by any person wholesaling tobacco or purchasing tobacco for retailing from someone who is not a licensed wholesaler, unless purchase is exempt.

Public interest assessment:

Although this licensing regime restricts competition in the tobacco wholesaling industry and by doing so keeps prices artificially inflated, it thereby reduces consumption, and was found to be in the public interest on public health grounds.

Recommendation:

To retain the above restriction.

OUTCOME

The previous Government endorsed the recommendations of the review.

BUSSELTON WATER AREA BY-LAWS 1994

Terms of Reference:	As per clause 5(9) of the Competition Principles Agreement
Conducted by:	The Office of Water Regulation
Consultation:	Intra-agency and inter-agency consultation
Status:	Endorsed by the previous Government 14 August 2000

SIGNIFICANT RESTRICTIONS

Restrictions:

- restrictions on the purposes for which water is used;
- restrictions on the use and volume of water; and
- restrictions on the on-sale of water.

Public interest assessment:

The effects of the restrictions on competition were adequately considered with a rigorous and transparent assessment carried out on the costs and benefits. Alternative means of achieving the objectives of the restrictions were given adequate consideration and in all three cases formed the basis for the recommendation. Of the three restrictions analysed in the review, the legislative provisions pertaining to all the restrictions were recommended for repeal or amendment.

Recommendation:

To amend the legislation by:

- defining more clearly the circumstances in which the switching of water usage between purposes is restricted so that these powers cannot be used anti-competitively;
- defining more clearly the circumstances in which the supply of water is restricted so that these powers cannot be used anti-competitively; and
- removing that part of by-law 14 dealing with the power to control the resale of water and allow buyers to on-sell water under an appropriate licence.

OUTCOME

The previous Government endorsed the recommendations of the review. The Busselton Water Board is currently drafting the amended by-laws.

CARNARVON BANANA INDUSTRY (COMPENSATION TRUST FUND) ACT 1961 AND REGULATIONS

Terms of Reference: As per clause 5(9) of the Competition Principles Agreement

Conducted by: Agriculture Western Australia

Consultation: Consultation included interviews with an agricultural insurance broker and a representative from the Horticultural Produce Commission.

Status: Repeal - Proclamation 28 June 2000

SIGNIFICANT RESTRICTIONS

Restrictions:

- The trust fund provides compensation for storm damage (this restricts the entry of potential competitors into the insurance market for storm damage in the Carnarvon banana industry)
- The trust fund is contributed to and guaranteed by Western Australian Treasury (subsidised compensation is available only to Carnarvon growers).

Public interest assessment:

The analysis concluded that the benefits to Carnarvon growers are essentially private in nature and that State contributions to the fund discriminate against other banana producers, imposing a public cost. Private insurance providers are effectively crowded out of a market where market failure is not evident. Options for banana crop insurance were put forward by a private insurer. Alternatives to legislation are being considered and discussed with industry participants.

Recommendation:

The Act should be repealed.

OUTCOME

The previous Government endorsed the recommendations of the review and the Act was repealed 28 June 2000.

CARNARVON IRRIGATION DISTRICT BY-LAWS 1962

HARVEY, WAROONA & COLLIE RIVER IRRIGATION DISTRICT BY-LAWS 1975

ORD IRRIGATION DISTRICT BY-LAWS 1963

PRESTON VALLEY DISTRICT BY-LAWS 1975

Terms of Reference: As per clause 5(9) of the Competition Principles Agreement

Conducted by: Water and Rivers Commission

Consultation: Consultation has taken place with the Office of Water Regulation, the Water Corporation, the Carnarvon Water Allocation Advisory Committee, South West Irrigation Cooperative, Kimberley Development Council, and Ord Irrigation Cooperative Limited.

Status: Endorsed by the previous Government
14 August 00

SIGNIFICANT RESTRICTIONS

Restrictions:

- prohibiting activities such as camping, lighting fires, and driving vehicles in water supply areas; and
- limiting the withdrawal of water from aquifers by the requirement to license any withdrawals.

Public interest assessment:

The effects of the restrictions on competition were adequately considered with a transparent assessment carried out on the costs and benefits. Where appropriate, alternative means of achieving the objectives of the restrictions were given adequate consideration. The restrictions were assessed as being in the public interest as the environmental and economic benefits outweighed the social costs.

Recommendation:

To retain the restrictions on competition found to be in the public interest and to amend the by-laws to reflect current management practices since they do

not reflect the responsibilities of the Water Corporation and the grower cooperatives since the devolution of irrigation management.

OUTCOME

The previous Government endorsed the recommendations of the review.

CASINO CONTROL ACT 1984

CASINO CONTROL (BURSWOOD ISLAND) (LICENSING OF EMPLOYEES) REGULATIONS 1985

CASINO (BURSWOOD ISLAND) AGREEMENT ACT 1985

Terms of Reference: As per clause 5(9) of the Competition Principles Agreement

Conducted by: Office of Racing, Gaming & Liquor

Consultation: An advertisement was placed in the *West Australian* and *Sunday Times* newspapers calling for submissions and direct contact occurred with major interest groups informing them of the review and the opportunity to make submissions.

Status: Endorsed by the previous Government 20 December 1999

SIGNIFICANT RESTRICTIONS

Retained Restrictions:

- the limits on prizes and play amounts for amusement games with prizes;
- the bingo regulations limiting the number of permits;
- the restrictions on payout ratios and minimum and maximum wagers for minor lotteries;
- the ability to set licence fees and taxes should remain, but safeguards should be incorporated in future casino agreements to ensure that competing casino operators are treated equally and that licence fees are limited to cost recovery;
- the licensing of casinos, including the licensing of games and the rules of games;
- the approval needed for Casino supply contracts;
- the licensing of casino employees;
- the ability of the Minister to approve certain ownership transactions and certain operating decisions;
- the restriction of the use of credit wagering at the Casino without the prior approval of the Gaming Commission;
- the period of exclusivity for the Casino;

- the conditions imposed on new casinos beyond the period of exclusivity;
- the monopoly over Casino style games and variants restricted to Burswood and any new casino beyond the period of exclusivity.

Public interest assessment:

The effects of the restrictions on competition were adequately considered with a rigorous and transparent assessment carried out on the costs and benefits. Where appropriate, alternative means of achieving the objectives of the restrictions were given adequate consideration. These, in some cases, formed the basis for the final recommendation. The legislative provisions giving rise to the above restrictions were assessed as being in the public interest for reasons of harm minimisation, ensuring probity standards, and reducing sovereign risk.

Recommendation:

To retain the above restrictions on competition found to be in the public interest.

Restriction:

The bingo conditions of play.

Recommendation:

Removing the restriction on the bingo conditions of play subject to appropriate changes being negotiated in the Casino (Burswood Island) Agreement Act to allow this restriction to be removed.

Restriction:

The licensing of “junkets”.

Recommendation:

Removing the licensing of “junkets” in favour of a less restrictive form of monitoring junkets that does not involve a formal approval process.

The review also recommended including sunset provisions in any new exclusive casino licence agreement, and that any new agreement entered into be on the recommendation of the Gaming Commission and subject to a full public benefit test.

OUTCOME

The previous Government endorsed the recommendations of the review. Drafting instructions to bring in to effect the recommendations endorsed by the previous Government were forwarded by the Office of Racing, Gaming & Liquor to Parliamentary Counsel’s Office on 20 October 2000.

CATTLE INDUSTRY COMPENSATION ACT 1965 AND REGULATIONS

Terms of reference: As per clause 5(9) of the Competition Principles Agreement

Conducted by: Agriculture Western Australia

Consultation: Interviews were conducted with key stakeholders including the Chief Veterinary Officer, the Western Australian Farmers Federation and the Pastoralists and Graziers association.

Status: Endorsed by the previous Government
23 March 1999

SIGNIFICANT RESTRICTIONS

Restrictions:

- Powers to nominated persons to inspect and destroy cattle for the purposes of disease control.
- Provision to raise a levy on the sale of cattle.

Public interest assessment:

The government has a role in facilitating the control of pests and diseases in the cattle industry.

Recommendation:

To retain the restrictions found to be in the public interest.

The review also recommended that the act be amended to ensure that compensation is only paid for animals destroyed as a result of a control program which is of a "sufficiently public good nature" and that the Government's contribution reflects the benefits that accrue to the wider community.

The act should be repealed pending the enactment of the Agricultural Produce Commission Bill, which would include the restrictions currently contained in this act.

OUTCOME

The previous Government endorsed the recommendations of the review.

CHICKEN MEAT INDUSTRY ACT 1977 AND REGULATIONS

Terms of Reference: As per clause 5(9) of the Competition Principles Agreement

Conducted by: Agriculture Western Australia

Consultation: Submissions were called for in the West Australian in July 1996. A public meeting was conducted on Friday August 23 1996 for interested parties.

Status: Endorsed by the previous Government
23 March 1999

SIGNIFICANT RESTRICTIONS

Restriction:

The power of the Chicken Meat Industry Committee (CMIC) to fix a growing fee.

Public interest assessment:

Current arrangements appear to reduce transaction costs, maintain stability in the industry, enhance cohesion and limit competition. The limitation on competition could result in an artificially high price for wholesale chickens. Company level bargaining was considered but not the preferred option given the present structure of the industry. Compulsory codes of conduct were considered desirable given the proposal to increase the choice of contractual arrangements between growers and processors and the need to maintain environmental, health and animal welfare standards.

Recommendation:

The powers of the Chicken Meat Industry Committee be altered to allow individual negotiations of grower contracts where growers wish to opt out of the collective bargaining arrangements.

Restriction:

The method of specifying the content of contracts and the growing fee.

Recommendation:

The right to collective bargaining be retained and reviewed in five years on the grounds that this mechanism is in the public interest.

Restriction:

The powers of the Minister or the Chicken Meat Industry Committee to exclude growing premises from the industry.

Recommendation:

Codes of practice governing environmental, health and animal welfare standards be made a mandatory condition of registration of an approved grower and specified in each contract.

Restriction:

The powers of the Minister to exclude new entrants into the chicken processing industry.

Recommendation:

The current restriction on entry to the processing sector be removed.

Restriction:

The prohibition of contracts outside of the collective bargaining arrangements of the Chicken Meat Industry Committee.

Recommendation:

The current restrictions on entry to the growing sector be removed.

OUTCOME

The previous Government endorsed the recommendations of the review. Legislation to amend the Act, the *Acts Amendment and Repeal (Competition Policy) Bill 2000*, was introduced to Parliament on 24 May 2000.

COUNTRY AREAS WATER SUPPLY (CLEARING LICENCE) REGULATIONS 1981

Terms of Reference: As per clause 5(9) of the Competition Principles Agreement

Conducted by: Office of Water Regulation

Consultation: Consultation took place with the Office of Water Regulation and the review was advertised in major Western Australian newspapers inviting the public to make submissions.

Status: Endorsed by the previous Government
18 December 2000

SIGNIFICANT RESTRICTIONS

Restriction:

The clearing of land for agricultural or other purposes is restricted in major water catchment areas where rainfall is less than 1000mm per annum.

Public interest assessment:

The effects of the restriction on competition were adequately considered with a rigorous and transparent assessment carried out on the costs and benefits. Alternative means of achieving the objectives of the restriction were given adequate consideration.

The legislative provisions giving rise to the restriction were assessed as being in the public interest because the benefits of preserving the quality of drinking water and environmental values outweighed the costs of limiting commercial activities that could contribute to economic growth and employment.

Recommendation:

To retain the licensing component of the regulations.

OUTCOME

The previous Government endorsed the recommendations of the review.

COUNTRY AREAS WATER SUPPLY ACT 1947

Terms of Reference: As per clause 5(9) of the Competition Principles Agreement

Conducted by: Office of Water Regulation

Consultation: An advertisement was placed in the *West Australian* newspaper calling for submissions and major interest groups were informed of the review and invited to make submissions.

Status: Endorsed by the previous Government 20 December 1999

SIGNIFICANT RESTRICTIONS

Restrictions:

- the power to divert, intercept and store water;
- the power to acquire land under the Land Administration Act 1997;
- the obligation for Water Corporation to supply water to all rated land; and
- the provision that notices served on a person in respect of water debt is binding on subsequent owners and occupiers.

Public interest assessment:

The effects of the restrictions on competition were adequately considered with a rigorous and transparent assessment carried out on the costs and benefits. Where appropriate, alternative means of achieving the objectives of the restrictions were given adequate consideration. These, in some cases, formed the basis for the recommendation.

The legislative provisions giving rise to the above restrictions were assessed as being in the public interest for reasons of good resource management and continuity of water services (already paid for).

Recommendation:

To retain the above restrictions.

Restrictions:

- section 39A, the power to acquire water assets from persons or local government;

- section 71 which allows the Water Corporation to control the purchase and on-sale of water that it has sold to a customer
- section 73 which allows the Water Corporation the right to recover rates irrespective of ownership or occupation of land and replacing this provision with the right to place a memorial on the title of land;
- sections 84 to 104 dealing with the power to sell or lease land and including a provision to allow a memorial to be attached to the title for the land on which arrears are owed; and
- section 114 providing the Water Corporation with the power to arrest.

Public interest assessment:

The recommended changes to the above restrictions will remove some outdated and inappropriate powers from the Water Corporation bringing forth regulations similar to those applying in the private sector.

Recommendation:

To repeal the above restrictions.

Restriction:

The provision for the sale of land in lieu of debts.

Recommendation:

Extending the power to recover rates in Schedule 2 of the Water Services Coordination Act 1995 and removing the provision for the sale of land in lieu of debts.

OUTCOME

The previous Government endorsed the recommendations of the review. Drafting instructions to bring in to effect the recommendations endorsed by the previous Government were forwarded by the Office of Water Regulation (via the Competition Policy Unit) to Parliamentary Counsel's Office in 2000.

COUNTRY AREAS WATER SUPPLY BY-LAWS 1957

COUNTRY TOWNS SEWERAGE BY-LAWS 1957

LAND DRAINAGE BY-LAWS 1986

METROPOLITAN WATER SUPPLY SEWERAGE AND DRAINAGE BY-LAWS 1981

METROPOLITAN WATER SUPPLY SEWERAGE AND DRAINAGE ACT (FORM OF DEBENTURE) BY-LAWS 1969

METROPOLITAN WATER SUPPLY SEWERAGE AND DRAINAGE BOARD (BEARER, DEBENTURE AND INSCRIBED STOCK) BY-LAWS 1979

Terms of Reference: As per clause 5(9) of the Competition Principles Agreement

Conducted by: Office of Water Regulation

Consultation: Consultation included calls for submissions in the *West Australian* newspaper and direct contact with major interest groups informing them of the review and of the opportunity to make a submission.

Status: Endorsed by the previous Government 20 December 1999

SIGNIFICANT RESTRICTIONS

Restrictions:

- price-fixing powers under the Country Areas Water Supply By-Laws;
- the Metropolitan Water Supply Sewerage and Drainage By-laws that prevent an occupier or landowner from supplying water to a user not connected to the land; and
- plumbing standards under the Metropolitan Water Supply Sewerage and Drainage By-laws.

Public interest assessment:

The effects of the restrictions on competition were adequately considered with a rigorous and transparent assessment carried out on the costs and benefits. Where appropriate, alternative means of achieving the objectives of the restrictions were given adequate consideration. These, in some cases, formed the basis for the final recommendation.

Recommendation:

The above restrictions were all recommended for repeal. The plumbing standards were recommended to be placed under the Plumbers Licensing Board.

Restrictions:

- inconsistent use of chemicals in different catchment areas
- the conditions for supply, use and sale of water
- the penalty provisions under the Metropolitan Water Supply Sewerage And Drainage By-laws

Public interest assessment:

The removal of the restrictions will facilitate trade of water and its reallocation to higher value uses.

Recommendation:

These restrictions were recommended for amendment to create consistency within catchment areas and with the recommendations made in the review of the Metropolitan Water Supply Sewerage and Drainage Act 1909.

OUTCOME

The previous Government endorsed the recommendations of the review. The Water Corporation in consultation with the Office of Water Regulation is currently developing drafting instructions for the amendments.

COUNTRY TOWNS SEWERAGE ACT 1948

Terms of Reference: As per clause 5(9) of the Competition Principles Agreement

Conducted by: Office of Water Regulation

Consultation: An advertisement was placed in the *West Australian* newspaper calling for submissions and major interest groups were informed of the review and the opportunity to make a submission.

Status: Approved by the previous Government 20 December 1999

SIGNIFICANT RESTRICTIONS

Restrictions:

- the obligation on water suppliers to keep sewers cleansed; and
- the provision that notices served on a person in respect of sewerage debt is binding on subsequent owners and occupiers

Public interest assessment:

The effects of the restrictions on competition were adequately considered with a rigorous and transparent assessment carried out on the costs and benefits. Where appropriate, alternative means of achieving the objectives of the restrictions were given adequate consideration.

The legislative provisions giving rise to the above restrictions were assessed as being in the public interest for reasons of public health and safety and financial management.

Recommendation:

The above restrictions are recommended for retention.

Restrictions:

- preference given to local government to install sewerage services;
- sections requiring water supply licence holders to supply water for cleansing at their own expense and the associated power of direction;
- the requirement capping interest rates at five per cent in respect of property sewer debts owed to the Water Corporation;

- sections 83 to 98 regarding the power to sell or lease land
- section 112 relating to the power to arrest

Public interest assessment:

The recommended changes to the above restrictions will increase the potential for competition in the installation of sewerage services and are therefore viewed as being in the public interest.

Recommendation:

To repeal the above restrictions and to amend legislation to allow a memorial to be attached to the title for the land on which arrears are owed.

OUTCOME

The previous Government endorsed the recommendations of the review. Drafting instructions to include the recommended amendments in the proposed *Acts Amendment (Competition Policy) Bill 2001* have been forwarded to Parliamentary Counsel.

CREDIT (ADMINISTRATION) ACT 1984 AND REGULATIONS

Terms of Reference: As per clause 5(9) of the Competition Principles Agreement

Conducted by: Ministry of Fair Trading

Consultation: A discussion paper was prepared and circulated to 36 stakeholders including credit administrators and consumer groups prior to the review being carried out. In addition an advertisement was placed in *The West Australian* on 23 May 1998 calling for submissions.

Status: Endorsed by the previous Government 9 August 1999

SIGNIFICANT RESTRICTIONS

Restriction:

The licensing requirements for credit providers. A number of associated provisions within the Act were also identified as:

- Powers of the Tribunal to hold inquiries;
- Powers of the Commissioner participate in proceedings of the Tribunal;
- Miscellaneous provisions in the Act giving power to the Commissioner to investigate.

Public interest assessment:

The analysis of the benefits and costs of the current system indicated licensing did not provide a net public benefit particularly given the civil redress, civil and criminal penalty, disciplinary and injunctive provisions contained in other existing consumer protection legislation.

A number of alternatives to the existing legislation were examined. Of those, registration and self-regulation were considered to have merit. However the review did not recommend that these systems be adopted.

Recommendation:

The above restrictions should be repealed. The conclusion that many of the powers of the Tribunal and Commissioner should be removed was supported by evidence that many objectives of the legislation are achievable through other legislation or non-legislative means.

Restriction:

Disciplinary provisions of the legislation.

Recommendation:

To retain the disciplinary provisions contained in the Act and Regulations as they are in the public interest.

OUTCOME

The previous Government endorsed the recommendations of the review. Drafting instructions to include the recommended amendments in the proposed *Acts Amendment (Competition Policy) Bill 2001* have been forwarded to Parliamentary Counsel.

DAIRY INDUSTRY ACT 1973 AND REGULATIONS

Terms of Reference: As per clause 5(9) of the Competition Principles Agreement

Conducted by: Agriculture Western Australia

Consultation: The review was advertised in December 1998 (*Countryman and Farm Weekly*) and in the *West Australian* in February 1998. The reviewers had input from an industry working party consisting of representatives from the Western Australian Farmers Federation, the Dairy Industry Authority and the Dairy Program Partnership Group of Agriculture Western Australia.

Status: Repeal Bill passed 28 June 2000

SIGNIFICANT RESTRICTIONS

Restriction:

The regulation of farm gate milk prices.

Public interest assessment:

The regulation of farm milk price is justified on the grounds that it corrects an imbalance in market power which is accentuated in Western Australia by the lack of competition in processing and retailing. The review noted that the restrictions would not result in a net public benefit if other states were to deregulate their industries.

Restriction:

The vesting of all milk in the Dairy Industry Authority.

Public interest assessment:

The vesting of milk is justified on the grounds that it is a means for achieving regulation and provides a secure payment system and ensures that milk companies do not understate the volumes used as market milk. Support for this restriction was conditional on the first restriction having a net public benefit.

Restriction:

The licensing powers of the Dairy Industry Authority.

Public interest assessment:

Licensing powers provide a public benefit on the grounds of ensuring health and quality standards are maintained.

Recommendations:

The above 3 restrictions were found to be in the public interest and should be retained.

OUTCOME

The previous Government endorsed the recommendations of the review. Subsequently Victorian growers voted in support of deregulation. Western Australia's support for the national package was consistent with the findings of the review.

A repeal bill was passed on 28 June 2000 and proclaimed on 30 June 2000 which removed the marketing restrictions in the milk industry.

DRIED FRUITS ACT 1947

Terms of Reference:	As per clause 5(9) of the Competition Principles Agreement
Conducted by:	Minister for Primary Industry
Consultation:	Interviews or comments were conducted or received with a number of stakeholders which were from or represented: The Dried Fruits Board; Growers; Agriculture WA; Swan Settlers Pecking House; Australian Dried Fruits Association; Department of Primary Industry (Com); Crown Solicitors Office; WA Health Department; Ministry of Fair Trading; and Victorian Dept of Natural Resources and Environment.
Status:	Repeal proclaimed 15 December 1998

SIGNIFICANT RESTRICTIONS

Restrictions:

Nine restrictions have been identified in the review. Six of these are redundant, as they have been inoperative for many years. The three operative restrictions are the grading of fruit, registration of dealers and packing sheds and maintenance of health standards.

Public interest assessment:

The effects of the restrictions have been adequately analysed. Restrictions that result in an unnecessary imposition of administrative costs or limit new players into the market will be eliminated when the Act is repealed. The restriction that aims to maintain industry quality standards could be removed without adversely affecting the industry where private sector quality assurance programs were adopted under a voluntary code of practice. The review acknowledges the public benefit of health standards under the Act, however suggests that this would be more appropriately managed under the Health Act conforming to the Food Hygiene Regulations. The Health Department has confirmed that the use of its Legislation for this purpose is appropriate providing consultation occurs between the industry and the Health Department.

Recommendation:

The review recommends that the three operative restrictions, relating to the grading of fruit, registration of dealers and packing sheds, and maintenance of health standards, be eliminated by repealing the Act.

OUTCOME

The previous Government endorsed the recommendations of the review. The repeal was proclaimed on 15 December 1998.

EAST PERTH REDEVELOPMENT ACT 1991 AND REGULATIONS

Terms of Reference: As per clause 5(9) of the Competition Principles Agreement

Conducted by: East Perth Redevelopment Authority

Consultation: Consultation occurred with State and local government bodies and peak bodies representing land developers, real estate agents and urban developers.

Status: Endorsed by the previous Government May 1998

SIGNIFICANT RESTRICTIONS

Restrictions:

- redevelopment control of the area;
- the compulsory taking of land;
- subdivision approval from Minister rather than the State Planning Commission;
- Treasurer's guarantee of loans; and
- Ministerial controls.

Public interest assessment:

The report has found that effects of the restrictions on competition are relatively minor. The report concludes that there are no acceptable alternatives to achieving the objectives of the three restrictions relating to the powers of the Authority. The powers are necessary to clean up the existing environmental problems and achieve redevelopment in line with the vision for the area. At this stage of the Authority's activities, it would not be feasible to modify the regulatory framework. The restrictions relating to the internal running of the Authority stem from the Authority's status as a government agency and therefore cannot be removed.

Recommendation:

That the above restrictions should be retained.

OUTCOME

The previous Government endorsed the recommendations of the review and no changes were made to the Act.

EASTERN GOLDFIELDS TRANSPORT BOARD ACT 1984 AND REGULATIONS

Terms of Reference:	As per clause 5(9) of the Competition Principles Agreement
Conducted by:	The Eastern Goldfields Transport Board
Consultation:	Major stakeholders, including wider community, local and State government
Status:	Amendment introduced to Parliament 24 May 2000

SIGNIFICANT RESTRICTIONS

Restriction:

Restrictions that gave the Board advantages arising from public ownership included:

- section 5(2) nominating the Board as an agent of the Crown;
- section 21(1) implying a Government Guarantee on borrowings; and
- section 35 exempting the Board from payment of local government rates.

Public interest assessment:

The effects of the restrictions have been identified and analysed adequately given that they are minor restrictions. The Board needs to retain the powers vested in Section 21(1) to enable monies to be borrowed to continue to perform its role as a provider of public bus services in Kalgoorlie/Boulder.

Recommendation:

To repeal sections 5(2) and 35 of the legislation and retain section 21(1) of the legislation.

Restriction:

Sections 32 and 36 allowing the Board to make by-laws and regulations governing the behaviour of patrons and other matters.

Public interest assessment:

Non-legislative alternatives were considered (and rejected) relating to the Board's current power to regulate patrons' behaviour through by-laws and regulations.

The Board's powers in this respect are comparable to those of the Department of Transport in the Transperth system, and they do not confer any significant advantage over potential competitors.

Recommendation:

That the above restriction should be retained.

OUTCOME

The previous Government endorsed the recommendations of the review. Legislation to amend the Act, the *Acts Amendment and Repeal (Competition Policy) Bill 2000*, was introduced to Parliament on 24 May 2000.

ELECTRICITY ACT 1945

Terms of Reference: As per clause 5(9) of the Competition Principles Agreement

Conducted by: Independent Consultant

Consultation: Representatives of the Chamber of Commerce and Industry of Western Australia, the Office of Energy, Western Power and AlintaGas were interviewed to obtain their views.

Status: Endorsed by the previous Government August 1998

SIGNIFICANT RESTRICTIONS

Restriction:

Regulations concerning mandated supply

Public interest assessment:

The public benefit of controlling the standards of electricity supply to the public (price and safety) and ensuring continuity of supply of an essential service to small customers exceeds the costs of this restriction.

Recommendation:

To retain the above restriction.

Restriction:

Coordinator determines interconnection prices.

Public interest assessment:

The benefits of regulatory control over pricing in a monopoly environment outweigh the costs of administration and compliance.

Recommendation:

To retain the restriction.

Restriction:

Restriction on sale/hire of non-approved electrical appliances.

Public interest assessment:

The public benefit arising from the imposition of safety standards outweigh the possible cost involved in restricting consumer choice and the availability of cheap but potentially dangerous appliances.

The review also recommended removal of Western Power's exemption from seeking the Coordinator's approval to supply electricity to the public.

Restriction:

Uniform Pricing

OUTCOME

The previous Government endorsed the recommendations of the review. The amendments will be included in the energy amendment bill.

ELECTRICITY CORPORATION ACT 1994

Terms of Reference: As per clause 5(9) of the Competition Principles Agreement

Conducted by: Independent Consultant

Consultation: Representatives of the Chamber of Commerce and Industry of Western Australia, the Office of Energy, Western Power and AlintaGas were interviewed to obtain their views.

Status: Endorsed by the previous Government August 1998

SIGNIFICANT RESTRICTIONS

Restriction:

Exclusive franchise of Western Power

Public interest assessment:

The exclusive franchise of Western Power is with respect to line capacity below 66kV and for users with an average load (at a single metered site) of less than 5MW. This provides a reserved market by preventing competition for small consumers such as householders. The benefits of competition in commercial electricity supply outweigh the costs associated with the possible reduction in Western Power's market share.

Recommendation:

To amend the legislation to allow a choice of supplier to all customers consuming an average load of more than 1 MW at a single metered site.

Restriction:

Barrier to entry to generate electricity.

Public interest assessment:

The public benefits of encouraging the entry of new generators was found to exceed the costs associated with the tendering process when significant extra capacity is required.

Recommendation:

To amend the legislation to allow entry of new generators when significant extra capacity is required.

Restriction:

Vertical integration

Public interest assessment:

The legislation review found that the vertical integration of Western Power involved a risk that the Corporation may exercise market power at the possible expense of new competitors. However, it was also found that under appropriate regulatory conditions, including ring-fencing, the costs of vertical integration do not necessarily outweigh the benefits of economies of scale.

Recommendation:

That ring-fencing be implemented to ensure that the public benefits of competition can be achieved in the context of the current structure of Western Power, with a structural review to occur prior to privatisation.

Recommendation:

That ring-fencing of Western Power be implemented to complement access regulation.

Restriction:

Competitive neutrality restrictions. A number of minor restrictions were identified which could potentially put Western Power at a disadvantage. These included provisions related to Ministerial direction, approval and consultation, compliance with certain public sector legislation and public sector borrowing limits.

Public interest assessment:

The public benefits of accountability outweigh the costs to the Corporation of compliance.

OUTCOMES

The previous Government endorsed the recommendations of the review.

The contestability threshold (ie. access to Western Power's distribution network) was lowered from 5 MW to 1 MW from 1 January 2000.

For regional systems and for electricity from renewable generation sources on the interconnected networks, the threshold is currently 34 kW. The government has foreshadowed further reductions to the general contestability threshold from 1 July 2001 (228 kW) and 1 January 2003 (34 kW).

Some minor Competitive Neutrality advantages have been removed by the *Statutes (Repeals and Minor Amendments) Act 1998*.

ENERGY OPERATORS (POWERS) ACT 1979

Terms of Reference:	As per clause 5(9) of the Competition Principles Agreement
Conducted by:	Independent Consultant
Consultation:	Representatives of the Chamber of Commerce and Industry of Western Australia, the Office of Energy, Western Power and AlintaGas were interviewed to obtain their views.
Status:	Endorsed by the previous Government August 1998

SIGNIFICANT RESTRICTIONS

Note that this Act was formerly known as the *Energy Corporations (Powers) Act 1979*.

Restriction:

Restriction providing monopoly rights to LPG trading.

Public interest assessment:

The costs of the restriction on competition outweigh the benefits of tight control of the market.

Recommendation:

To remove the above restriction.

Restriction:

Competitive neutrality restrictions. The energy corporations have powers of compulsory land acquisition and disposal, powers of entry, and also certain planning approval and water rights and indemnity against compensation claims.

Public interest assessment:

The benefits of facilitation of energy supply outweigh the costs to landowners and the possible disadvantages to proponents of other land uses.

Recommendation:

To retain these provisions but to extend the rights to all undertakings for the provision of public energy facilities.

OUTCOMES

The previous Government endorsed the recommendations of the review.

Implementation occurred through the *Energy Coordination Amendment Act 1999* and the *Gas Corporation (Business Disposal) Act 1999*.

ENVIRONMENTAL PROTECTION ACT 1986

Terms of Reference:	As per clause 5(9) of the Competition Principles Agreement
Conducted by:	Independent consultant
Consultation:	Submissions were invited directly from interested parties.
Status:	Endorsed by the previous Government 1997

SIGNIFICANT RESTRICTIONS

Restrictions:

- The ability to require an environmental impact assessment.
- Licensing of occupiers of prescribed premises.
- Exempting certain firms from Environmental Protection Act licensing.
- Requirement for firms to comply with the environmental standards set.
- The power to prepare and publish environmental protection policies.
- Restricting emissions of sulphur dioxide, atmospheric wastes and ozone substances.
- Restricting activities of land holders around the Peel Inlet and Swan Coastal Lakes.

Public interest assessment:

The costs of these restrictions include restricted output, higher prices, possible allocative inefficiencies and higher government regulatory costs, industry compliance costs and costs of production. The restrictions were found to be in the public interest because their costs were assessed as being outweighed by the benefits they provide in protecting quality of life and reducing health risks by controlling activities with potentially large negative effects on the environment and maintaining the load on the environment at an appropriate level.

Recommendation:

That the restrictions should be retained.

OUTCOME

The previous Government endorsed the recommendations of the review.

EXOTIC DISEASES OF ANIMALS ACT 1993

Terms of Reference: As per clause 5(9) of the Competition Principles Agreement

Conducted by:

Consultation: Advice on the public benefit of the restrictions was sought from technical experts.

Status: Endorsed by the previous Government
23 March 1999

SIGNIFICANT RESTRICTIONS

Restrictions:

- Powers to inspect, demand assistance and issue local quarantine orders.
- Powers to seize and destroy infected stock.
- Powers to control the movement of stock.

Public interest assessment:

The restrictions in the Act provide a means for the community to control or eradicate outbreaks of exotic diseases in stock.

Recommendation:

The restrictions on competition are in the public interest and should be retained.

OUTCOME

The previous Government endorsed the recommendations of the review.

EXPLOSIVES AND DANGEROUS GOODS ACT 1961

Terms of Reference:	As per clause 5(9) of the Competition Principles Agreement
Conducted by:	Department of Minerals and Energy
Consultation:	Views of industry participants are well known and frequently sought through State based committees. The move to a performance-based approach to regulating explosives and dangerous goods is well supported by key stakeholders. The committees have consulted widely in arriving at their national framework for the regulation of explosives and dangerous goods.
Status:	Endorsed by the previous Government August 1998

SIGNIFICANT RESTRICTIONS

Restrictions:

The Act requires numerous forms of licences, permits, authorisations or approvals to be obtained as a means of regulating the various activities involving explosives and dangerous goods.

Public interest assessment:

The effects of the restrictions are generally to impose compliance costs on business and to protect the community from the activities involving explosives and dangerous goods. The review finds that generally there are more efficient and effective ways of achieving the objectives of the legislation. The review considers more flexible approaches to controlling activities involving dangerous goods and finds that these alternatives can also achieve the required safety and community protection objectives.

Recommendations:

That:

- the licensing requirement for the manufacture of explosives be aligned with existing performance based controls for other chemicals;
- the licensing restrictions on the storage of explosives be amended to remove requirements for approval by inspectors and shift responsibility for safety to the industry;

- the restrictions on the sale of explosives be administered by one agency (the Police Department) to improve administrative efficiency;
- the requirement for a permit for each fire-works display be replaced by an accreditation system with an audit process;
- the present advantage granted to certain persons in the issue of permits to use explosives be amended so that criteria are based on competency considerations;
- the restriction requiring pre-inspection and licensing of vehicles used for the transport of explosives be removed and replaced with the system currently being implemented for other dangerous goods in the new national transport legislation;
- the restriction requiring licences for the storage of dangerous goods be replaced by an industry based accreditation scheme; and
- the system of classification of dangerous goods and the authorisation criteria for explosives be amended to directly reference the United Nations criteria.

OUTCOMES

The previous Government endorsed the recommendations of the review.

The *Dangerous Goods (Transport) Act 1998* implemented a revised framework for classifying explosives and dangerous goods and transport-related matters. This ensures international consistency in systems of classification and authorisation criteria for dangerous goods and explosives. In addition, regulation of the transportation of explosives is now consistent with that of other dangerous goods under the new national transport framework.

On 31 July 2000, the previous Government agreed to the drafting of a new Dangerous Goods Bill to implement remaining recommendations. The drafting instructions were prepared with wide consultation but the Bill had not been introduced to Parliament prior to the State election being called. The Department of Minerals and Energy has been progressing the development of associated regulations.

The Department of Minerals and Energy is also progressing amendments to the existing Fireworks Regulations with planned completion by the end of 2001.

FERTILISERS ACT 1977 AND REGULATIONS

Terms of Reference: As per clause 5(9) of the Competition Principles Agreement

Conducted by:

Consultation: Interviews were conducted with the registrar of Fertilisers, and the Manager of Chemical Standards, Victorian Dept of Natural Resources and Environment.

Status: Endorsed by the previous Government August 1997

SIGNIFICANT RESTRICTIONS

Restriction:

That requiring retailers to clearly label fertilisers and handle them in such a way as to avoid contamination.

Public interest assessment:

The restriction protects customers against the risk of fertiliser contamination which could potentially result in product damage, pose a health hazard and cause the loss of valuable export grain markets.

Recommendation:

To modify the act to apply only to those fertilisers that pose a risk to agriculture and that less restrictive means are used to achieve the same objectives for other fertilisers.

OUTCOME

The previous Government endorsed the recommendations of the review.

FINANCE BROKERS CONTROL ACT 1975 AND REGULATIONS

Terms of Reference:	As per clause 5(9) of the Competition Principles Agreement
Conducted by:	The Finance Brokers Industry Reference Group carried out broad industry consultation when preparing the review. The Reference Group also contained consumer representatives.
Consultation:	Submissions were invited directly from interested parties.
Status:	Endorsed by the previous Government 15 February 1999

SIGNIFICANT RESTRICTIONS

Restrictions:

- restrictions on who can be licensed;
- exceptions for specific persons from the provisions of the Act;
- restrictions on the business structure of finance brokers;
- advertising restrictions;
- limits on remuneration and restrictions on how this can be paid;
- conditions on how monies are kept on behalf of clients;
- powers of the Board to collect information;
- auditing requirements; and,
- other restrictions on the conduct of finance brokers.

Public interest assessment:

It was concluded that the significant cost of complying with the Act did not warrant the benefits (if any) that it obtained and that these could be achieved with a less restrictive model. There was no evidence that the current system reduced the risk of defalcation or fraudulent behaviour of finance brokers.

The review identified a class of persons known as private lenders who require some form of regulation to ensure a high quality service is maintained. This group includes superannuants who see mortgage backed loans as being an alternative to bank deposits.

Recommendation:

To repeal the Act because it is in the public interest to do so and to introduce a Code of Practice under section 42 of the Fair Trading Act 1987, to provide regulation of financial intermediaries who deal as private lenders, for 3 years while the industry develops self regulatory mechanism.

OUTCOME

The previous Government endorsed the recommendations of the review.
Amend - Implementation Plan 27 June 2000

FUEL SUPPLIERS LICENSING ACT 1997

Terms of Reference:	As per clause 5(9) of the Competition Principles Agreement
Conducted by:	State Revenue Department
Consultation:	Intra-agency and inter-agency consultation
Status:	Endorsed by the previous Government 18 December 2000

SIGNIFICANT RESTRICTIONS

Restriction:

The Act does not restrict competition in any way because from 1 July 2000:

- there are no licensing and certification requirements,
- no restrictions on the usage of diesel fuel supplied, and
- no subsidies available for diesel supplied.

Recommendation:

To repeal the Act after July 2001 when all subsidies have been paid for diesel supplied prior to 1 July 2000 and all audit activity has been satisfactorily completed.

OUTCOME

The previous Government endorsed the recommendations of the review.

GAMING COMMISSION ACT 1987 AND REGULATIONS

Terms of Reference: As per clause 5(9) of the Competition Principles Agreement

Conducted by: Office of Racing, Gaming & Liquor

Consultation: An advertisement was placed in the *West Australian* newspaper and *Sunday Times* calling for submissions as well as direct contact with major interest groups informing them of the review and of the opportunity to make a submission.

Status: Endorsed by the previous Government 20 December 1999

SIGNIFICANT RESTRICTIONS

Restrictions:

- the provision that casino operators should hold a valid licence;
- the restriction on thimblorig and its variants;
- the licensing system for organisations conducting community gaming;
- the prohibition on credit gambling (for community gaming);
- the restriction on the availability of gaming machines should remain but be reviewed when more information becomes available on the social cost of gaming machines;
- the licensing system for gaming operators and suppliers;
- the licensing system for organisations conducting bingo;
- the rules to restrict the manner of play for bingo;
- the restrictions on community lotteries.

Public interest assessment:

The effects of the restrictions on competition were adequately considered with a rigorous and transparent assessment carried out on the costs and benefits. The legislative provisions giving rise to the above restrictions were assessed as being in the public interest for reasons of harm minimisation and ensuring probity standards.

Recommendation:

To retain the above restrictions on competition found to be in the public interest.

Restrictions:

- restriction on casino games played for community gaming
- the restriction on two-up
- restriction on bingo prize pools

Public interest assessment:

The effects of the restrictions on competition were adequately considered with a rigorous and transparent assessment carried out on the costs and benefits. Where appropriate, alternative means of achieving the objectives of the restrictions were given adequate consideration. These, in some cases, formed the basis for the final recommendation.

Recommendation:

The above restrictions should be removed subject to appropriate changes being negotiated in the Casino (Burswood Island) Agreement Act. To remove these restrictions unilaterally could bring forth substantial damages claims against the State.

Restrictions:

- sole supplier status of the provider of major lottery products;
- barriers to entry to community lotteries market for commercial operators;
- barriers to entry to lotteries originating outside Western Australia.

Recommendations:

To amend the legislation by:

- amending the Gaming Commission Act to allow for the licensing of suppliers of State lottery products by State Agreement;
- amending the Gaming Commission Act to reflect that lotteries conducted by organisations, the subject of a State Agreement, are lawful lotteries;
- amending the Gaming Commission Act to allow for the licensing of professional fundraisers;
- removing the definition of "foreign lottery" in the Gaming Commission Act; and

- amending the definition of “unlawful lottery” in the Gaming Commission Act to remove reference to foreign lotteries conducted in the State.

OUTCOME

The previous Government endorsed the recommendations of the review. Drafting instructions to bring in to effect the recommendations endorsed by the previous Government were forwarded by the Office of Racing, Gaming & Liquor to Parliamentary Counsel’s Office on 20 October 2000.

GAS CORPORATION ACT 1994

Terms of Reference: As per clause 5(9) of the Competition Principles Agreement

Conducted by: Independent Consultant

Consultation: Representatives of the Chamber of Commerce and Industry of Western Australia, the Office of Energy, Western Power and AlintaGas were interviewed to obtain their views.

Status: Repealed 17 December 2000

SIGNIFICANT RESTRICTIONS

Restriction:

Exclusive franchise over commercial and residential users.

Public interest assessment:

The benefits of competition in commercial and residential gas supply outweigh the costs associated with the possible reduction in AlintaGas's market share.

Recommendation:

To allow full contestability for all users by 1 July 2002.

Restriction:

Vertical integration.

Public interest assessment:

The legislation review found that the vertical integration of AlintaGas involved a risk that the Corporation may exercise market power at the possible expense of new competitors. However, it was also found that under appropriate regulatory conditions, including ring-fencing, the costs of vertical integration do not necessarily outweigh the benefits of economies of scale. This issue was considered in greater detail through a subsequent clause 4 review.

Recommendation:

That ring-fencing be implemented to ensure that the public benefits of competition can be achieved in the context of the (then) current structure of AlintaGas.

Restriction:

Competitive neutrality restrictions, including provisions related to Ministerial direction, approval and consultation, compliance with certain public sector legislation and public sector borrowing limits.

Public interest assessment:

The benefits of public accountability of a government owned business were found to outweigh the costs to the Corporation of compliance.

Recommendation:

To retain the restriction while in public ownership.
Restriction: Obligation to provide additional distribution capacity.

Public interest assessment:

The benefits of increasing competition, through access of third parties to the distribution network, were found to outweigh the possible higher costs for AlintaGas in providing additional capacity ahead of schedule.

Recommendation:

To retain the above restriction.

OUTCOMES

The previous Government endorsed the recommendations of the review.

Contestability timetables have been set out as agreed under Annex I to the 1997 Intergovernmental Agreement. Around 95 per cent of the domestic gas market (in volume) is now contestable. From 1 January 2000, customers using 100 TJ or more per year became able to choose their gas supplier. From 1 January 2002, customers using 1 TJ or more will become contestable. Full retail contestability is to be introduced from 1 July 2002.

Vertical integration of AlintaGas was re-considered prior to the privatisation process (see chapter 3.2 on Structural Reform - Gas). The Gas Code's ring-fencing provisions were applied to AlintaGas from 17 December 2000, the date that privatisation was completed. This is in advance of the agreed timetable under Annex I to the 1997 Intergovernmental Agreement.

Competitive Neutrality restrictions were removed as a result of the privatisation of AlintaGas.

Licence conditions imposed on AlintaGas (and potentially other distributors) are applied through the *Energy Coordination Act 1994* on a non-discriminatory basis. The access regulation framework also ensures that extensions to the distribution network are transparently considered and costed. There is also adequate provision for appeal and review of regulatory decisions.

GOLD CORPORATION ACT 1987 AND REGULATIONS

Terms of Reference:	As per clause 5(9) of the Competition Principles Agreement
Conducted by:	Gold Corporation
Consultation:	Intra-agency and inter-agency consultation
Status:	Endorsed by the previous Government 9 August 1999

SIGNIFICANT RESTRICTIONS

Restrictions:

Several competitive advantages and disadvantages arising as a result of government ownership including: the government guarantee underwriting several business activities; the West Australian Mint's status as a heritage site; a statutory exemption for the West Australian Mint from rates and taxes, including local government rates, the Metropolitan Region Improvement Tax, and land tax; and the payment of a statutory contribution in place of income tax.

The competitive disadvantages identified are: a small proportion of employees on public sector awards; Government reporting obligations; and Ministerial directions that may not allow the group to take optimum commercial decisions.

Public interest assessment:

The costs and benefits of removing each competitive advantage and disadvantage were assessed in a rigorous and transparent manner.

Recommendations:

The review recommended several measures to remove the most significant competitive advantages. These are the payment of a fee by Gold Corporation for the Government guarantee; rescinding Section 35(7) of the Act in order to remove the West Australian Mint's statutory exemptions from charges including local government rates and land tax; and the application of the income tax equivalent regime to Gold Corporation (which will replace the statutory contribution). The net benefit of removing the competitive disadvantages identified in the review was assessed as not sufficiently important to justify changes to the Gold Corporation Act.

OUTCOME

The previous Government endorsed the recommendations of the review. Legislation to amend the Act, the *Acts Amendment and Repeal (Competition Policy) Bill 2000*, was introduced to Parliament on 24 May 2000.

GOVERNMENT RAILWAYS ACT 1904 AND BYLAWS

Terms of Reference:	As per clause 5(9) of the Competition Principles Agreement
Conducted by:	Westrail
Consultation:	Intra-agency and inter-agency consultation
Status:	Endorsed by the previous Government July 1998

SIGNIFICANT RESTRICTIONS

Restrictions:

The identified restrictions of the legislation relate primarily to matters of competitive neutrality where the Commission enjoys advantages and special powers as a result of being publicly owned. The restrictions identified have been treated as minor, as their effects on the economy are not considered significant.

Public interest assessment:

The effects of the restrictions were identified adequately for those restrictions listed. However, none of the restrictions were subjected to a public benefit test. In some cases, this was because a preliminary analysis concluded that they were clearly redundant or inappropriate, and a full public benefit test was not necessary to support the recommendation to delete the provisions or amend them to remove the anti-competitive restrictions. Where relevant, non-legislative alternatives such as commercial contracts were considered as a replacement for statutory powers over customers and others. In most of these cases, such commercial options were recommended as preferable to the statutory provisions.

Recommendations:

The review recommended amendments to remove the competitive advantages or disadvantages conferred on the Commission including:

- reducing its powers to determine who may seek access to rail;
- ensuring its assets are valued on a commercial basis;
- neutralising its advantages gained from government borrowings;
- imposing rates and taxes equivalent to other transport operators;

- removing its powers to set conditions for carriage of goods by other railway operators; control persons employed by other parties; fix charges for all persons providing railway related services; and license taxis and other transport operators; and
- applying safety rules and standards on an equal basis.

OUTCOME

The previous Government endorsed the recommendations of the review. The Government Railways (Access) Act 1998, Rail Safety Act 1998 and the freight sale enabling legislation have addressed the majority of the review recommendations.

HIRE-PURCHASE ACT 1959 AND REGULATIONS

Terms of Reference:	As per clause 5(9) of the Competition Principles Agreement
Conducted by:	Fair Trading
Consultation:	Submissions were invited from interested parties through an advertisement in the <i>West Australian</i> newspaper.
Status:	The previous Government endorsed the review. Amending legislation introduced to Parliament in 2000

SIGNIFICANT RESTRICTIONS

Restrictions:

- Credit providers are required to refund any surplus amount following repossession of goods under hire-purchase transactions;
- The court has power to reopen hire-purchase transactions which it considers to be "harsh or unconscionable"; and
- The ability of credit providers to repossess farming goods is regulated.

Public interest assessment:

The objectives of the restrictions are generally to provide protection to farmers and small businesses entering into hire-purchase transactions.

The impacts of these restrictions are considered to be relatively minor. The main costs of the remaining restrictions are to constrain the freedom of credit providers. As the restrictions are minor, the impact on the cost of providing hire-purchase arrangements should be minimal.

Recommendation:

That the restrictions on competition should be retained on public benefit grounds.

OUTCOME

The previous Government endorsed the recommendations of the review. Legislation to amend the Act, the *Acts Amendment and Repeal (Competition Policy) Bill 2000*, was introduced to Parliament on 24 May 2000.

HORTICULTURAL AND PRODUCE COMMISSION ACT 1988

Terms of Reference: As per clause 5(9) of the Competition Principles Agreement

Conducted by:

Consultation: The reviewers consulted primarily with the Commission and technical experts with Agriculture Western Australia.

Status: Endorsed by the previous Government
12 November 1997

SIGNIFICANT RESTRICTIONS

Restriction:

That which gives powers to the Horticultural Produce Commission to raise compulsory levies from growers.

Public interest assessment:

The levy is an appropriate mechanism for raising funds for services that are of a benefit to all of the horticultural industry (eg research and development, marketing advice, industry standards).

Recommendation:

The restriction be amended to ensure that levies are used only to fund services that are of a sufficiently public good nature and have had a benefit cost assessment.

OUTCOME

The previous Government endorsed the recommendations of the review.

HUMAN REPRODUCTIVE TECHNOLOGY ACT 1991

HUMAN REPRODUCTIVE TECHNOLOGY AMENDMENT ACT 1996

WESTERN AUSTRALIAN REPRODUCTIVE TECHNOLOGY COUNCIL (NOMINATING BODIES) REGULATIONS 1992

Terms of Reference: As per clause 5(9) of the Competition Principles Agreement

Conducted by: Department of Health

Consultation: Intra-agency and inter-agency consultation

Status: Endorsed by the previous Government
14 August 2000

SIGNIFICANT RESTRICTIONS

Restriction:

The review found that the Act contained no restrictions that had any effect on competition so as to warrant assessment.

Recommendation:

To retain the Act in its present form.

OUTCOME

The previous Government endorsed the recommendation of the review. No legislative amendment is required.

HUMAN TISSUE AND TRANSPLANT ACT 1982

Terms of Reference:	As per clause 5(9) of the Competition Principles Agreement
Conducted by:	Department of Health
Consultation:	Intra-agency and inter-agency consultation
Status:	Endorsed by the previous Government 14 August 2000

SIGNIFICANT RESTRICTIONS

Restriction:

The review found that the Act contained no restrictions that had any effect on competition so as to warrant assessment.

Recommendation:

To retain the Act in its present form.

OUTCOME

The previous Government endorsed the recommendation of the review.

INDUSTRIAL RELATIONS ACT 1979

Terms of Reference:	As per clause 5(9) of the Competition Principles Agreement
Conducted by:	Department of Productivity and Labour Relations
Consultation:	Views of stakeholders were canvassed through their submissions to the Fielding Review.
Status:	Endorsed by the previous Government 18 May 1998

SIGNIFICANT RESTRICTIONS

Restrictions:

- qualifications for Chief Commissioner and President;
- age limit for members of Western Australian Industrial Relations Commission;
- restrictions on the jurisdiction of Western Australian Industrial Relations Commission;
- individual access to Western Australian Industrial Relations Commission;
- representation of parties by legal practitioners;
- employees as parties to industrial agreements;
- registration of employer and employee organisations;
- access to Public Sector Appeal Board and Railway Classification Board;
and
- use of the Government Printer to print the Gazette.

Public interest assessment:

The effects of the restrictions have been adequately considered and analysed. Due to the non-financial nature of the restrictions and the difficulty in quantifying them, the analysis is purely qualitative. However, the level of detail is provided is sufficient for a rigorous analysis. The restrictions are largely discriminatory in nature. A number of restrictions discriminate between employees in relation to access to dispute resolution services.

Recommendation:

The above restrictions should be removed as they are not in the public interest.

Restriction:

Binding of employers and employees to common rule awards

Recommendation:

The legislation should be amended to produce a superior outcome.

Restrictions

- parties to workplace agreements having total access to Western Australian Industrial Relations Commission;
- restrictions on the jurisdiction of Western Australian Industrial Relations Commission; and
- prohibition on use of membership funds for political expenditure.

Recommendation:

The restrictions are in the public interest and should be retained.

OUTCOME

The previous Government endorsed the recommendations of the review. Amendments are required.

INSURANCE COMMISSION OF WESTERN AUSTRALIA ACT 1986 AND REGULATIONS

Terms of Reference: As per clause 5(9) of the Competition Principles Agreement

Conducted by: Minister for Finance

Consultation: Intra-agency and inter-agency consultation

Status: Endorsed by the previous Government May 1998

SIGNIFICANT RESTRICTIONS

Restrictions:

- ministerial direction and oversight;
- limitation on investment and borrowing powers;
- requirements for compliance with public sector legislation; and
- the Insurance Commission's status as agent of the Crown and its capacity to borrow from Treasury and have a Treasurer's guarantee of its borrowings.

Public interest assessment:

It is concluded that the restrictions provide net public benefit primarily because:

- they improve accountability and oversight controls that are consistent with the approach to other public sector bodies; and
- legislation other than this Act gives the Insurance Commission exclusive functions so that it has no competitors.

It was concluded that there are not less restrictive or less costly alternative means for achieving the benefit of each of the restrictions.

Recommendation:

To retain the restrictions as they provide a net public benefit and are necessary to achieve the objectives of the Act.

OUTCOME

The previous Government endorsed the recommendations of the review. No changes were made to the Act.

LAND DRAINAGE ACT 1925

Terms of reference: As per clause 5(9) of the Competition Principles Agreement

Conducted by: Office of Water Regulation

Consultation: An advertisement was placed in the *West Australian* newspaper calling for submissions as well as direct contact with major interest groups informing them of the review and of the opportunity to make a submission.

Status: Endorsed by the previous Government 20 December 1999

SIGNIFICANT RESTRICTIONS

Restriction:

Notices served on a person in respect of a drainage debt are binding on subsequent owners and occupiers.

Public interest assessment:

This provision arises because the drainage service is tied to the land and cannot be removed from the land as it is typically part of an area wide public drainage service. The legislative provisions giving rise to this restriction were assessed as being in the public interest.

Recommendation:

To retain the above restriction on competition found to be in the public interest.

Restriction:

Differential treatment regarding the recovery of criminal penalties (fines).

Recommendation:

Remove the ability for the Water Corporation to recover criminal penalties.

Restriction:

Differential treatment for the apportionment of rates and complaints or action for rates.

Recommendation:

Include section 104 in Schedule 2 of the Water Services Coordination Act 1995 so that licence holders other than the Water Corporation have the ability to pursue complaints or action for rates.

Restriction:

Monopoly powers for the Water Corporation regarding the ability to construct drainage works.

Recommendation:

Include the appeals provisions of the Land Drainage Act 1925 in Schedule 2 of the Water Services Coordination Act 1995.

Restriction:

Differential processes for determining prices for rural drainage compared to other water services.

Recommendation:

- modify the Land Drainage Act to be aligned with the charging provisions of the Water Agencies (Powers) Act
- include section 103 in Schedule 2 of the Water Services Coordination Act 1995 so that licence holders other than the Water Corporation have the ability to apportion rates between owners and occupiers.

Public interest assessment:

The effects of the restrictions on competition were adequately considered with a rigorous and transparent assessment carried out on the costs and benefits. Where appropriate, alternative means of achieving the objectives of the restrictions were given adequate consideration. These, in some cases, formed the basis for the final recommendation.

The recommended changes to the above restrictions will increase the potential for competition in the construction of drainage works.

OUTCOME

The previous Government endorsed the recommendations of the review. Drafting instructions to include the recommended amendments in the proposed *Acts Amendment (Competition Policy) Bill 2001* have been forwarded to Parliamentary Counsel.

LAW REPORTING ACT 1981

Terms of Reference:	As per clause 5(9) of the Competition Principles Agreement
Conducted by:	Ministry of Justice
Consultation:	The Law Book Company, Butterworths and the Law Society of Western Australia were consulted and made submissions to the review.
Status:	Endorsed by the previous Government March 1999

SIGNIFICANT RESTRICTIONS

Restriction:

The requirement to obtain prior written consent of the Attorney General before publishing judicial decisions of State courts.

Public interest assessment:

The benefits of the restriction were found to arise through maintaining the integrity of judicial processes utilising published judgments, which were assessed as outweighing the insignificant costs associated with potential reduced innovation and availability of law reports. It was concluded that the net public benefit of the present legislative restriction could be achieved by a less restrictive alternative which involves a negative licensing system.

Recommendation:

The restriction should be removed and replaced with a less restrictive negative licensing system that gives blanket authorisation to anyone to publish law reports while preserving the Attorney General's right to revoke, vary or withdraw authorisation.

Restriction:

The practice of selective invitation and awarding of a single contract for a ten year period for the publication of the Authorised Reports

Recommendation:

The practice of selective invitation and awarding of a ten year contract for publication of the Authorised Reports be replaced with a widened tender process and a reduction of future contract periods to five years.

Restriction:

An arrangement between the Supreme Court Library and the Attorney General which establishes the Library as a monopoly service provider for the supply of unreported judgments and which is not subject to any form of market testing.

Public interest assessment:

The arrangement between the Supreme Court Library and the Attorney General was found to give rise to substantial benefits associated with greater accessibility to unreported judgments for the judiciary and the community at large through an efficient distribution service at minimal cost.

Recommendation:

To retain the above restriction.

OUTCOME

The previous Government endorsed the recommendations of the review. The recommendations are likely to be effected through administrative rather than legislative means.

LEGAL AID COMMISSION ACT 1976

LEGAL AID COMMISSION AMENDMENT BILL 2000

Terms of Reference:	As per clause 5(9) of the Competition Principles Agreement
Conducted by:	Ministry of Justice
Consultation:	Intra-agency and inter-agency consultation
Status:	Endorsed by the previous Government December 2000

SIGNIFICANT RESTRICTIONS

The review identified four restrictions in the Act as it will be amended by the Bill, all classified as minor:

- prescribed composition of the Legal Aid Commission;
- power and recognition given to the Law Society of Western Australia (Inc);
- prescribed qualifications of public assessor; and
- prescribed rate of interest payable on money owed to Legal Aid Commission.

The review found that each of the restrictions is in the public interest and should be retained.

OUTCOME

The previous Government endorsed the review's conclusion that the restrictions in the Act, as it will be amended by the Bill, should be retained as being in the public interest.

LICENSED SURVEYORS ACT 1909 AND REGULATIONS

STRATA TITLE GENERAL (AMENDMENT) REGULATIONS 1997

STRATA TITLE GENERAL AMENDMENT REGULATIONS 1996

STRATA TITLE GENERAL REGULATIONS 1996

STRATA TITLES AMENDMENT ACT 1995

STRATA TITLES AMENDMENT ACT 1996

Terms of Reference: As per clause 5(9) of the Competition Principles Agreement

Conducted by: Department of Land Administration

Consultation: A public notice was placed in The West Australian newspaper in November 1997 and February 1998 inviting submissions on the anti-competitive elements of the legislation. Specific comment was also invited from a number of potential consumers of surveying services although no responses were received.

Status: Endorsed by the previous Government
3 February 1999

SIGNIFICANT RESTRICTIONS

Restriction:

- Licensing arrangements in the profession of cadastral surveying;
- Entry requirements for surveyors from reciprocating jurisdictions;
- Imposing on licensed surveyors compulsory professional development as a pre-requisite for periodic renewal of a Practising Certificate;
- Requiring survey graduates to complete an additional 24 months of closely supervised field training culminating in the award of a Certificate of Competency;

- Restrictions on the number of graduates a licensed surveyor is permitted to supervise under the terms of the Professional Training Agreement;
- Potential discriminatory powers of the Land Surveyors' Licensing Board;
- Requiring surveyors to purchase professional indemnity insurance cover as a condition for annual renewal of the Practising Certificate; and
- Requiring those surveyors wishing to undertake authorised surveys to hold both a licence and a current Practising Certificate.

Public interest assessment:

The effects of the restrictions have been adequately considered and analysed. Assessment of costs and benefits of each individual restriction have been carried out in a robust and transparent fashion.

Alternative means of achieving the legislative objectives were seriously considered for most of the identified restrictions. Alternatives to the existing licensing arrangements (such as negative licensing and co-regulation) were examined thoroughly. However, the analysis concluded that these alternatives would offer less net public benefit than the State's existing licensing system.

Recommendations:

Of the 8 restrictions analysed in the review, the legislative provisions pertaining to 6 restrictions were recommended for repeal or amendment, as discussed below.

- the reconstitution of the Land Surveyors Licensing Board so that there are as many members of consumer/user groups as licensed surveyors;
- a clearer definition of what constitutes good fame and character, with particular regard to any previous criminal record including business fraud and/or dishonest business practices;
- repeal of redundant regulation requiring certainty that the applicant possesses the minimum standards of competency demanded by the community;
- a reduced minimum level of supervised field training for trainee surveyors;
- repeal of regulations relating to the number of graduates a licensed surveyor can employ under the terms of a Professional Training Agreement; and
- repeal of the powers of the Board to regulate the approval of particular insurers.

The legislative provisions giving rise to the remaining restrictions were assessed as being in the public interest and therefore recommended for retention.

OUTCOME

The previous Government endorsed the recommendations of the review. Amendments to implement the recommendations were introduced to Parliament 24 May 2000.

LOCAL GOVERNMENT ACT 1995

Terms of Reference:	As per clause 5(9) of the Competition Principles Agreement
Conducted by:	Department of Local Government
Consultation:	The report is based on the work of a Department of Local Government working party including representatives of the West Australian Municipal Association and Institute of Municipal Management. In relation to specific provisions, it also takes account of the view of other authorities and organisations including the Western Australian Electoral Commission, Agriculture Western Australia and the Royal Agricultural Society of Western Australia.
Status:	Endorsed by the previous Government 30 December 1999

SIGNIFICANT RESTRICTIONS

Restrictions:

- powers to make local laws;
- conditions attached to performing executive functions;
- powers to undertake certain activities on land that is not local government property;
- powers to regulate certain activities;
- powers to close certain thoroughfares to vehicles;
- ability to enter into certain contracts for goods and services without calling for tenders;
- ability to dispose of certain property without tenders or public auction;
- requirements to prepare business plans for local government commercial enterprises;
- requirements to disclose specified information in business plans when entering into joint venture arrangements;
- incapacity to have a controlling interest in a body corporate;
- powers of the Electoral Commissioner in conducting local government elections and postal voting elections;
- powers not to close meetings to the public when discussing commercially sensitive information;

- powers to allow public access to commercially sensitive records;
- powers to establish a tailored local government workers compensation arrangement;
- power to defer, grant discounts, waive and write off debt and impose late payment interest on money owed;
- requirements to comply with certain provisions when investing funds;
- requirements when setting fees and charges;
- provisions exempting certain land from local government rates;
- powers to allow special rating provisions and differential general rates for certain land;
- powers to grant discounts and concession on rates or service charges;
- powers to impose a minimum payment on rates and enter into special agreements for the payment of rates or service charges;
- requirements to comply with certain standards of auditors; and
- conditions regarding constitution of local government associations

Public interest assessment:

The effects of the restrictions were adequately considered and a transparent assessment was carried out on their costs and benefits. Alternative means of achieving the objectives of the existing restrictions were given adequate consideration but were found to offer less net public benefit.

Recommendation:

To retain the above restrictions.

Restriction:

Requirement for local governments to participate in a single industry superannuation scheme.

Public interest assessment:

The provision to maintain a single industry superannuation scheme for employees to ensure a viable fund to protect the contributions of members is considered no longer necessary or appropriate.

Recommendation:

Legislative amendments should be made to give local government employees a choice over the investment of superannuation contributions.

The amendments will be deferred for consideration, however this review will be conducted conjunction with the review of the *Government Employees Superannuation Act 1987* and Regulations.

Restriction:

Exempting Cooperative Bulk Handling land from rates while not exempting potential competitors.

Public interest assessment:

The provision exempting Cooperative Bulk Handling from local government rates but requiring a payment in lieu of rates, is potentially anti-competitive because potential competitors are not exempt.

Recommendation:

The provision will be deferred for consideration in conjunction with the review of the *Bulk Handling Act 1967* and Regulations.

OUTCOME

The previous Government endorsed the recommendations of the review.

LOTTERIES COMMISSION ACT 1990

LOTTERIES COMMISSION: (SUPER 66) RULES 1996; (POWERBALL LOTTO) RULES 1996; (SATURDAY LOTTO) RULES 1996; (OZ LOTTO) RULES 1996; (SOCCER POOLS) RULES 1996; (INSTANT LOTTERY) RULES 1996; LOTTERIES COMMISSION REGULATIONS 1991

Terms of Reference: As per clause 5(9) of the Competition Principles Agreement

Conducted by:

Consultation: Intra-agency and inter-agency consultation

Status: Endorsed by the previous Government
15 October 1997

SIGNIFICANT RESTRICTIONS

Restrictions:

- Allowing the Lotteries Commission (the Commission) to enter into agreements with other State lotteries agencies for the purposes of jointly conducting Lotto and Soccer Pools.
- Allowing the Commission to use trading names and symbols.
- Allowing the Commission to obtain permits directly from the Minister.
- Making it an offence for a person, without the approval of the Commission, to derive a fee or reward for promoting or forming a syndicate to purchase a ticket in a game conducted by the Commission.
- Allowing the Commission to enjoy the status, immunities and privileges of the Crown.

Public interest assessment:

The benefits of these restrictions can be categorised in terms of achieving economies of scale, pursuing social objectives, controlling risk of public harm and minimising regulatory costs. The restrictions were retained in the public interest because they were assessed as outweighing the costs associated with reductions in competition and choice of lottery products.

Recommendation:

The restrictions were recommended for retention.

OUTCOME

The previous Government endorsed the recommendations of the review. No changes were made to the act.

MENTAL HEALTH ACT 1996

MENTAL HEALTH REGULATIONS 1997

MENTAL HEALTH (TRANSITIONAL) REGULATIONS 1997

MENTAL HEALTH (CONSEQUENTIAL PROVISIONS) ACT 1996

Terms of Reference: As per clause 5(9) of the Competition Principles Agreement

Conducted by: Department of Health

Consultation: Intra-agency and inter-agency consultation

Status: Endorsed by the previous Government
December 2000

SIGNIFICANT RESTRICTIONS

Two restrictions on competition were identified, both assessed as having a minor impact on commercial activity:

- Persons falling within defined categories (such as medical practitioner, authorised medical practitioner, mental health practitioner and authorised mental health practitioner) have exclusive rights to perform certain functions under the Act.
- An involuntary mental patient can only be held in an authorised hospital.

Conclusions Drawn from Analysis:

The review found that the restrictions safeguard the welfare of patients with mental illnesses, comply with international obligations and promote high and consistent standards in mental health care, leading to increased public confidence in the system. The review concludes that the restrictions are in the public interest and should be retained.

Recommendation

The review recommended that the restrictions in the mental health laws reviewed are in the public interest and should be retained

OUTCOME

The previous Government endorsed the recommendations of the review. No changes were made to the Act.

METROPOLITAN WATER AUTHORITY ACT 1982

METROPOLITAN WATER AUTHORITY (MISCELLANEOUS) BY-LAWS 1982

Terms of Reference: As per clause 5(9) of the Competition Principles Agreement

Conducted by: Water and Rivers Commission

Consultation: Consultation took place with the Office of Water Regulation, the Water Corporation, SERCO Australia Pty Ltd, Western Water and the Western Australian Municipal Association.

Status: Endorsed by the previous Government
14 August 2000

SIGNIFICANT RESTRICTIONS

Restriction:

There were no restrictions on competition identified in the legislation.

Recommendation:

No change be made to the Act for National Competition Policy purposes.

OUTCOME

The previous Government endorsed the recommendations of the review.

METROPOLITAN WATER SUPPLY, SEWERAGE AND DRAINAGE ACT 1909

Terms of Reference: As per clause 5(9) of the Competition Principles Agreement

Conducted by: Office of Water Regulation

Consultation: The reviewers have consulted widely and in accord with recommended processes, including calls for submissions in the *West Australian* newspaper and direct contact with major interest groups informing them of the review and of the opportunity to make a submission.

Status: Endorsed by the previous Government
20 December 1999

SIGNIFICANT RESTRICTIONS

Restrictions:

- the power to divert, intercept and store water;
- the right to deliver a memorial on land and extend to other licence holders;
- the obligation on Water Corporation to supply water where charges have been levied;
- the power of Water Corporation to control infrastructure; and
- the power to limit discharge into sewers

Public interest assessment:

The effects of the restrictions on competition were adequately considered with a rigorous and transparent assessment carried out on the costs and benefits. Where appropriate, alternative means of achieving the objectives of the restrictions were given adequate consideration. These, in some cases, formed the basis for the recommendation.

The above restrictions were assessed as being in the public interest for reasons of good resource and financial management and efficient regulation of a monopoly supplier.

Recommendation:

To retain the above restrictions on competition found to be in the public interest.

Restrictions:

- the powers to lease and sell property currently bestowed on Water Corporation;
- on the resale of water;
- the power to arrest offenders from the Water Corporation; and
- the ability for the Water Corporation to recover criminal penalties.

Recommendation:

That the above provisions be removed.

The review also recommended:

- extending the power to acquire land to other licence holders;
- extending the power to recover charges to all parts of Schedule 2 of the Water Services Coordination Act 1995; and
- defining more clearly when the powers to limit the use and volume of water may be used.

OUTCOME

The previous Government endorsed the recommendations of the review. Drafting instructions to include the recommended amendments in the proposed *Acts Amendment (Competition Policy) Bill 2001* have been forwarded to Parliamentary Counsel.

MINING ACT 1978

MINING REGULATIONS 1981

Terms of Reference: As per clause 5(9) of the Competition Principles Agreement

Conducted by: Department of Minerals and Energy

Consultation: The review was conducted internally by the Department of Minerals and Energy in consultation with three inter-departmental committees that include non-government representatives. These were the Mining Industry Liaison Committee (MILC), the Mining Environmental Liaison Committee (MELC) and the Geological Survey Liaison Committee.

Status: Endorsed by the previous Government
1 December 2000

SIGNIFICANT RESTRICTIONS

Restrictions:

The overriding restriction considered by the review is the licensing of mineral exploration and production, including:

- The method by which licences are allocated;
- The purpose for which licenses are allocated;
- The size of the area allocated;
- The period of time for which licences are allocated;
- The manner in which licences or parts of licences are relinquished;
- The exclusion of certain land, including privately owned land, national parks and reserves from use for mining purposes;
- Requirements to provide certain information reporting on exploration and production activities;
- Requiring minimum expenditure commitments by licensees.

Public interest assessment:

The review found the restrictions to be necessary for the orderly exploitation of mineral resources, minimising land use conflict, protecting the legitimate

rights of parties, minimising adverse environmental impacts, and promoting efficiency in such activity.

It also found the framework generally underwrote the required certainty of rights to promote risk taking investment activity in the sector.

Given the investment uncertainty that would arise from awarding concurrent titles, the review considered and reported favourably on the current framework for tenement management and the relatively limited scope for discretionary decision making powers backed up by appropriate review provisions. The identified restrictions provide net benefits and serve the public interest.

Recommendation:

Legislative amendment is not required.

Restriction:

Minister's consent required to the transfer of a mining interest in certain cases.

Public Interest Assessment:

The restriction results in reduced turn-over in tenements but is an effective means of reducing the risk of 'real-estating' and speculation in tenements. Transfers are still permitted but must be justified.

Recommendation:

This is a reasonable exercise of executive power and should be retained.

Restriction:

The Minister's powers to:

- exempt certain land from the operation of the Act for environmental and other reasons; and
- to depart from standard principles for granting title in certain cases.

Public interest assessment:

The above restriction was found to be in the public interest. Overwhelming public interest reasons exist for the protection of certain tracts of land from mining. Allocating tenements outside of a 'first come, first considered' principle can ensure that a prospective tenement is exploited with maximum efficiency.

Recommendation:

The restriction should be retained.

Restriction:

A royalty exemption exists for some industrial minerals produced on private land.

Public Interest Assessment:

Further information is required to assess the public interest.

Recommendation:

This restriction should be revisited by the Mining Act Royalty Review project.

OUTCOME

The previous Government endorsed the recommendations of the review. The royalty provisions are to be the subject of a separate review.

MOTOR VEHICLE (THIRD PARTY INSURANCE) ACT 1943 AND REGULATIONS

Terms of Reference: As per clause 5(9) of the Competition Principles Agreement

Conducted by: Independent consultants conducted the review with assistance from the Board of Commissioners and Senior Executives of the Insurance Commission of Western Australia (ICWA).

Consultation: Inter-Agency

Status: Endorsed by the previous Government
14 August 2000

SIGNIFICANT RESTRICTIONS

Restrictions:

- The owner of any motor vehicle used on a road must hold third party insurance in accordance with the Act;
- Compulsory third party (CTP) insurance policies under the Act may only be issued through the Director-General of Transport
- Changes to scales of premiums must be approved by the Minister, who may invite the Insurance Commission of Western Australia to review its recommendations in regard to scales of premiums;
- A legal practitioner may not charge a claimant more than is provided for by a determination by the Legal Costs Committee under section 58W of the *Legal Practitioners Act 1893*.

Public interest assessment:

The review found the above restrictions give rise to net public benefits (ensuring injured parties are compensated, reducing costly private legal action, lowering transactions costs, lowering costs of insurance, increasing the proportion of claims' payments retained by claimants). No less restrictive means of achieving the objectives were found.

Recommendation:

That the above restrictions should be retained.

Restrictions:

- Insurance Commission of Western Australia is the sole provider of Compulsory Third Party insurance;
- State and Commonwealth Government agencies are exempt from the Act in respect of insuring any vehicle used solely for public business;
- Only a solicitor, barrister, officer of an association or the Insurance Commission of Western Australia, may act for reward on behalf of a claimant or defendant in regard a claim arising from death or injury incurred in a motor-vehicle accident.

Public interest assessment:

The review found that above three restrictions do not offer sufficient public benefit to justify their retention.

Recommendation:

The above restrictions should be removed.

OUTCOME

The previous Government endorsed the recommendations of the review. Drafting instructions are being prepared to include the recommended amendments in the proposed *Acts Amendment (Competition Policy) Bill 2001*.

MOTOR VEHICLE DEALERS ACT 1973 AND REGULATIONS

Terms of Reference: As per clause 5(9) of the Competition Principles Agreement

Conducted by: Ministry of Fair Trading

Consultation: Consultation occurred between the Motor Vehicle Sales Industry Reference Group and market participants consumers.

Status: Endorsed by the previous Government 1997

SIGNIFICANT RESTRICTIONS

Restriction:

Compulsory licensing for motor vehicle dealers.

Public interest assessment:

This restriction was found to be in the public interest because licensing helps exclude unscrupulous persons from the industry which in turn helps ensure that customers are treated fairly. Licensing requires that dealers are solvent and understand their obligations under the act.

Recommendation:

To retain the restriction.

Restriction:

Compulsory licensing of yard managers.

Public interest assessment:

Yard managers assume the same responsibilities as motor vehicle dealers. The cost of the restriction is minor because it only requires a four day course to be licensed, and the benefits to the consumer outweigh these costs.

Recommendation:

To retain the restriction found to be in the public interest.

Restriction:

Statutory warranties are required on used vehicles.

Public interest assessment:

Statutory warranties were introduced to provide better safeguards for consumers with respect to un-roadworthy and dangerous vehicles sold by dealers. The value of this warranty in protecting consumers from exploitation is considered to outweigh its costs.

Recommendation:

To retain the restriction.

Restriction:

Licensing on car market operators and salespersons.

Recommendation:

To repeal this restriction.

Restriction:

The power of the Motor Vehicle Licensing Board to set standards for premises.

Recommendation:

To repeal the above restriction.

OUTCOME

The previous Government endorsed the recommendations of the review. The amendment bill is being drafted.

NORTH WEST GAS DEVELOPMENT (WOODSIDE) AGREEMENT AMENDMENT ACT 1994

Terms of Reference:	As per clause 5(9) of the Competition Principles Agreement
Conducted by:	Independent consultant
Consultation:	Submissions were invited directly from interested parties following the release of an information paper.
Status:	Endorsed by the previous Government August 1998

SIGNIFICANT RESTRICTIONS

Restriction:

Restrictions that arise from legislative authorisations given for anti-competitive elements associated with various contracts entered into by Woodside joint venture participants. These authorisations constitute section 51 exceptions from the *Trade Practices Act 1974*.

Public interest assessment:

It is in the public interest for these restrictions to continue until their expiry in 2005 because the costs associated with any lessening of competition outweigh the following benefits:

- Long term stability provided for investment;
- As a prerequisite to the deregulation that has occurred in Western Australian electricity and gas markets.

Moreover, their unilateral removal would be seen as antagonistic by industry, with a long term reduction in resource development investment in the State.

Recommendation:

To retain the restrictions until they expire in 2005.

OUTCOME

The previous Government endorsed the recommendations of the review. No changes were made to the Act.

PAINTERS REGISTRATION ACT 1961

Terms of Reference: As per clause 5(9) of the Competition Principles Agreement

Conducted by: Ministry of Fair Trading

Consultation: The reviewers have consulted widely and in accord with recommended processes. The review report was also released for public comment between 13 July and 7 August.

Status: Repeal - Implementation Plan 25 November 1999

SIGNIFICANT RESTRICTIONS

Restrictions:

- the requirement to be registered;
- restrictions on who can be registered
- controls on business structure;
- restrictions on advertising; and
- restrictions on dealing in registrations

Public interest assessment:

It was concluded that the current system of mandatory licences (known as registration) for those individuals, partnerships and corporations carrying on the business of painting, is too restrictive. It was also concluded that mandatory licensing did not achieve the objectives of maintaining industry standards or provide greater consumer protection than would be afforded by a less restrictive model.

While the review concluded that self-regulation would be ideal, it recognised that an adequate system of self-regulation was not yet in place and therefore recommended that a certification scheme be developed to allow consumers readily identify painters who possess particular skills. It is proposed that the certification be supported by a system of negative licensing allowing for the removal of persons who do not adhere to basic standards of commercial conduct from the industry.

Recommendation:

The restrictions should be removed to allow for the establishment of a less restrictive certification scheme in place of the current licensing arrangements.

OUTCOME

The previous Government endorsed the recommendations of the review.

PAWN BROKERS AND SECOND HAND DEALERS ACT 1994 AND REGULATIONS

Terms of Reference: As per clause 5(9) of the Competition Principles Agreement

Conducted by: Western Australian Police Service

Consultation: The reviewers undertook public consultation processes during the process of developing the legislation, including a later review of the legislation once it had been in operation for 12 months. Intra-agency and inter-agency consultation.

Status: Endorsed by the previous Government
9 August 1999

SIGNIFICANT RESTRICTIONS

Restrictions:

- the requirement to hold a licence, with attendant licence conditions;
- record keeping and identification requirements;
- the obligation to supply information and records to the Police Service;
- conditions and restrictions applying to purchase and sale of goods;
- the prohibition of establishment fees for contracts;
- compensation provision requirements; and
- police powers in relation to stolen goods.

Public interest assessment:

On balance and given the limited knowledge available at present, the Act's licensing system appears effective and in the public interest.

Alternative approaches considered but not at this time recommended include:

- reviewing the list of goods exempted from the operation of the Act. Exempted goods are generally those considered difficult to dispose of as second hand goods by dishonest means; and

- introduction of arrangements that do not involve licensing such as:
 - development of an industry code of ethics;
 - consumer education measures;
 - negative licensing, ie. allowing any person to hold a licence unless they have committed a serious offence; and
 - a minimal reporting regime, requiring dealers to make information available to police only when requested.

Recommendations:

That the present licensing provisions of the Act and Regulations be retained, on the understanding that they may be modified following future review and that a further review of the Act be conducted after:

- the current legislation has been in operation for an additional three year period, when the impact of the legislation should be more assessable; and
- alternative approaches, including those likely to be introduced in other States, have been examined.

OUTCOME

The previous Government endorsed the recommendations of the review.

PETROLEUM PIPELINES ACT 1969 AND REGULATIONS

Terms of Reference:	As per clause 5(9) of the Competition Principles Agreement
Conducted by:	Department of Minerals and Energy
Consultation:	Consultation took place with pipeline licensees, the Office of Energy, the Australian Pipelines Industry Association and major gas producers. Submissions were received from the Office of Energy and Woodside Energy.
Status:	Endorsed by the previous Government 1 December 2000

SIGNIFICANT RESTRICTIONS

Restriction:

The ability of the Government to licence construction and operation of a pipeline by a public authority other than via the *Petroleum Pipelines Act 1969*.

Recommendation:

This provision of the Act should be removed so that all petroleum pipelines come under the jurisdiction of the same legislation.

Restrictions:

- inconsistent pipeline legislation throughout Australia, although the principles are broadly similar;
- restrictions arising from licensing provisions of the current legislation;
- ministerial directions as to third-party access to petroleum pipelines;
- the access provisions of the National Gas Code apply only to gas pipelines, and there are not identical provisions for petroleum pipelines;
- use of pipelines is restricted to authorised substances;
- licensees are subject to prescriptive safety provisions; and
- the Act contains outdated methods for lodging and publicising information.

Recommendation:

To retain the above restrictions.

Public interest assessment:

The effects of the restrictions on competition were adequately considered and the conclusions (to remove the possible exemption under the Act for pipelines constructed and operated by public authorities; and to retain remaining restrictions that have been demonstrated as serving the public interest) flow logically from the analysis.

Licensing provisions and related restrictions were found to protect the community from potential environmental and public safety concerns associated with pipeline infrastructure.

The review recommended minor improvements to the Act's safety provisions and streamlining application processes.

OUTCOMES

The previous Government endorsed the recommendations of the review.

The recommendation to remove the potential for differential treatment between the public and private sector is planned to be implemented through the next NCP omnibus legislative package.

The passage of the *Petroleum Safety Act 1999* allows for revisions to relevant regulations to implement the recommendations for outcomes based pipeline safety standards. These are being progressed by the Department of Minerals and Energy.

The Department of Minerals and Energy is examining proposals for the introduction of a standard electronic application procedure.

The common carrier provisions are to be reconsidered following the outcomes of the national review of Petroleum (Submerged Lands) legislation that contains similar provisions, so as to allow consistent access provisions to apply to onshore and offshore oil pipelines.

PIG INDUSTRY COMPENSATION ACT 1942 AND REGULATIONS

Terms of Reference: As per clause 5(9) of the Competition Principles Agreement

Conducted by: Minister for Agriculture

Consultation: Consultation was limited to industry representatives (eg growers association).

Status: Endorsed by the previous Government
12 November 1997

SIGNIFICANT RESTRICTIONS

Restriction:

Compulsorily raised funds to be used for scientific research and at the Minister's discretion.

Recommendation:

To enact a proposed Agricultural Produce Commission Bill applying to all growers' councils.

Public interest assessment:

The recommended changes would ensure that funds from compulsory levies are used only for services of a public good nature.

Restriction:

The provision allowing the Minister to raise levies from growers to fund services to the pig industry including compensation and disease control programs.

Public interest assessment:

This restriction provides a service that benefits all growers and would not be provided for by the public sector in the absence of legislation.

Recommendation:

To retain the restriction.

OUTCOME

The previous Government endorsed the recommendations of the review. Agency has notified Treasury that it will be repealed if a pig producers committee forms under the Agricultural Products Commission Act.

PLANT PESTS AND DISEASES (ERADICATION) FUND ACT 1996 (FORMERLY SKELETON WEED AND RESISTANT GRAIN INSECTS (ERADICATION FUNDS) ACT 1974)

Terms of Reference:	As per clause 5(9) of the Competition Principles Agreement
Conducted by:	Minister for Agriculture
Consultation:	Consultation was limited to technical experts of Agriculture Western Australia
Status:	Endorsed by the previous Government 14 November 1997

SIGNIFICANT RESTRICTIONS

Restriction:

That giving power to the Minister to impose compulsory levies to growers through charges to the Agricultural Protection Board to ensure that these levies are used only to fund services.

Recommendation:

To amend the legislation to ensure that levies are used only to fund services that are of a sufficiently public good nature and have been assessed as in accordance with benefit cost methodology by Treasury of Agriculture Western Australia.

OUTCOME

The previous Government endorsed the recommendations of the review.

POLICE FORCE CANTEEN REGULATIONS 1988

Terms of Reference:	As per clause 5(9) of the Competition Principles Agreement
Conducted by:	Western Australian Police Service
Consultation:	Intra-agency and inter-agency consultation
Status:	Endorsed by the previous Government September 1998

SIGNIFICANT RESTRICTIONS

Restriction:

The Regulations enable a Canteen to sell liquor under terms and conditions that are not subject to the requirements of the *Liquor Licensing Act 1988*, and therefore discriminate in favour of the Canteen over competing businesses in the private sector.

Public interest assessment:

The effect of the restriction is to enable the Canteen more flexibility in its operations than would be afforded to a private sector operator. The impact of the restriction in practice is minimal.

Recommendation:

As the restrictions have a minimal impact and cannot be justified in the public interest, the report concludes that the advantages should be removed. As there is no canteen operating at the moment, the report recommends that the removal of the restriction be addressed following the review of the *Liquor Licensing Act*. If a canteen is established before the review is completed, the review recommends that the canteen voluntarily comply with the Act.

OUTCOME

The previous Government endorsed the recommendations of the review. Minor amendments to the Act are necessary.

PORT KENNEDY DEVELOPMENT AGREEMENT ACT 1992

Terms of Reference:	As per clause 5(9) of the Competition Principles Agreement
Conducted by:	Ministry for Planning
Consultation:	Consultation was conducted with the community, private sector and government representatives on the Port Kennedy Management Board.
Status:	Endorsed by the previous Government 14 August 2000

SIGNIFICANT RESTRICTIONS

Restrictions:

- the developers sole right (and responsibility) to develop the Port Kennedy area in accordance with the Act and the project proposal agreed to by the Minister;
- in exchange for undertaking the agreement and assuming the commercial risks and environmental requirements, the developer will be granted up to 25 hectares of freehold land;
- the requirement for the developer to build a townsite and to connect to essential facilities in exchange for a 50 year lease at a peppercorn rent;
- putting in place all the statutory zones and reservations necessary for the development to proceed in a more timely manner than would otherwise have been the case;
- Government policy and reporting requirements not applicable to the private sector, by the Minister and the Port Kennedy Management Board ensuring the development progresses as agreed by Parliament;
- the requirement for the developer to use labour, services, suppliers and materials available within Western Australia, where economically practical to do so; and
- the requirement for all certificates of title to be marked with a notice that the land was formally an artillery range and may contain unexploded munitions.

Public interest assessment:

Many of the restrictions identified were necessary to enable the development to proceed, such as the removal of squatters, rezoning and putting in place reserves, organising the provision of/connection to basic utilities.

Other restrictions identified relate to the desire of the Government to put in place a significant recreation and resort facility for public enjoyment, without the need for the State to contribute significant sums of capital and/or assume commercial risks in its own right.

It is considered that the above impacts on competition do not significantly impact on the economy, given the relatively small size of the development.

For each restriction on competition, it is demonstrated that the public benefit outweighs the public cost that would arise in the absence of the Agreement Act. In the absence of a way of funding the cleaning up of the military artillery range, removing squatters on Crown land and addressing environmental concerns over ground water and sea water contamination within the Port Kennedy area, it is unlikely that the area could be made useable for the public.

Alternative approaches have been considered and it is concluded that there are no other acceptable means of achieving the same results afforded by the identified restrictions.

In addition, the restrictions listed form an integral part of the whole commercial contract between the State of Western Australia and the developer. There would be substantial costs to the State associated with any attempt to revise or renegotiate the terms of contract.

Recommendation:

To retain the above restrictions.

OUTCOME

The previous Government endorsed the recommendations of the report.

POTATO GROWING INDUSTRY TRUST FUND 1947 AND REGULATIONS

Terms of reference: As per clause 5(9) of the Competition Principles Agreement

Conducted by: Minister for Primary Industry

Consultation: Meetings were held with industry representatives including representatives of the Potato Growers Association and the Potato Industry Trust Advisory Board.

Status: Endorsed by the previous Government
23 March 1999

SIGNIFICANT RESTRICTIONS

Restriction:

The power to raise a compulsory levy on the sale of potatoes for the purposes of disease control and providing compensation to growers in the event of a disease outbreak.

Public interest assessment:

The Fund provides a means of overcoming market failure arising from a spreading pest of disease.

Recommendation:

To retain the above restriction. The report also recommends that the Act be repealed pending the enactment of the Agricultural Produce Commission Bill which would include the restrictions currently contained in this Act.

OUTCOME

The previous Government endorsed the recommendations of the review. No changes were made to the Act.

POULTRY INDUSTRY (TRUST FUND) ACT 1948

Terms of Reference:	As per clause 5(9) of the Competition Principles Agreement
Conducted by:	Minister for Primary Industry
Consultation:	Consultation took place with the trust fund management and staff of Agriculture Western Australia.
Status:	Endorsed by the previous Government 12 November 1997

SIGNIFICANT RESTRICTIONS

Restriction:

The levy raising powers of the Poultry Industry Trust Fund

Recommendation:

To amend the legislation to ensure that those funds are used only to fund services that are of a sufficiently public good nature and have been assessed as being in accordance with benefit cost methodology approved by Treasury or Agriculture Western Australia.

Restriction:

The current arrangements of financial assistance of the Trust Fund to the Poultry Farmers Association.

Recommendation:

To remove the current arrangements and replace them with a voluntary levy.

Restriction:

The power of the Poultry Industry Trust Fund Committee to impose a levy on the sale of eggs.

Public interest assessment:

This restriction was seen to be in the public interest as it addresses the issue of market failure which is associated with the control of diseases and pests in the agricultural sector.

Recommendation:

To retain this restriction.

OUTCOME

The previous Government endorsed the recommendations of the review.
Minor amendments are to be made.

PROFESSIONAL STANDARDS ACT 1997

Terms of Reference:	As per clause 5(9) of the Competition Principles Agreement
Conducted by:	Attorney General
Consultation:	Intra-agency and inter-agency consultation
Status:	Endorsed by the previous Government July 1999

SIGNIFICANT RESTRICTIONS

Restriction:

A person who is a member of a professional or occupational association that has a scheme registered with the Professional Standards Council may secure limited liability with respect to claims for damages made against them in relation to occupational liability.

Public interest assessment:

The effects of the restriction were adequately considered and a rigorous and transparent assessment was carried out on its costs and benefits. The restriction was found to be in the public interest. Alternative means of achieving the objectives of the existing restriction were given adequate consideration but were found to offer less net public benefit.

Recommendation:

The restriction on competition imposed by the Act should be retained on public benefit grounds.

OUTCOME

The previous Government endorsed the recommendation of the review.

PUBLIC TRUSTEE ACT 1941

ACTS AMENDMENT (PUBLIC TRUSTEE AND TRUSTEE COMPANIES) BILL 2000

Terms of Reference: As per clause 5(9) of the Competition Principles Agreement

Conducted by: Ministry of Justice

Consultation: Intra-agency and inter-agency consultation

Status: Endorsed by the previous Government
December 2000

SIGNIFICANT RESTRICTIONS

The identified restrictions in the Act, as amended by the Bill, were all classified as minor.

The review found that each of the restrictions is in the public interest and should be retained.

OUTCOME

The previous Government endorsed the review's conclusion that the restrictions in the Act, as it will be amended by the Bill, should be retained as being in the public interest.

PUBLIC WORKS ACT 1902

Terms of Reference:	As per clause 5(9) of the Competition Principles Agreement
Conducted by:	Department of Contract and Management Services
Consultation:	An independent consultant conducted the review through a targeted consultation process of organisations both within and outside the public sector.
Status:	Endorsed by the previous Government 19 October 1998

SIGNIFICANT RESTRICTIONS

Restrictions:

Four restrictions were identified in the legislation, all of which are related to competitive neutrality:

- Financial provisions and powers which potentially allow the Western Australian Building Management Authority to access avenues of credit unavailable to private firms in competing commercial activities;
- Powers of entry on to land for the purposes of public works which may lead to cost savings deriving from not having to secure rights of access from landowners – such savings are not available to private firms;
- Powers to close roads or streets which may reduce the cost of works through not having to provide for access or protect the safety of road users in the vicinity of works – a right not available to private firms; and
- Exemptions from local building regulations (except public health regulations) which may provide cost advantages over firms which have to comply with local regulations.

Public interest assessment:

The restrictions have been classified as minor, as their economic effects are insignificant and they are used to facilitate public works, the wider public benefit of which have already been assessed. The costs and loss of flexibility associated with more stringent definition of the projects to which the provisions may apply were found to outweigh the minimal benefit that might accrue. The extension of relevant powers to the private sector, in certain cases, was considered. However, given the negligible current involvement of the private sector in providing public infrastructure in Western Australia, such reform is not considered justified.

Recommendation:

To retain the restrictions.

OUTCOME

The previous Government endorsed the recommendations of the review.

RACING RESTRICTION ACT 1927

Terms of Reference:	As per clause 5(9) of the Competition Principles Agreement
Conducted by:	Office of Racing Gaming & Liquor
Consultation:	Inter-Agency
Status:	Endorsed by the previous Government 6 August 1999

SIGNIFICANT RESTRICTIONS

Restriction:

The use of a mechanical contrivance in connection with racing between animals other than horses is not permitted.

Public interest assessment:

The effects of the restriction were adequately considered and a rigorous and transparent assessment was carried out on its costs and benefits. It was found that the objective of the Act was to make "tin hare" or greyhound racing unlawful in order to remove an opportunity for gambling. This objective was found to be no longer relevant given that greyhound racing has been allowed by statute since 1972 and all forms of gambling are now strictly controlled under a raft of dedicated legislation.

As the Act has no other purpose it achieves no benefit but produces a net cost to the community because one of its side effects is to make technically illegal other forms of animal racing which use a mechanical device such as a starting gate, box or saddle.

Alternative means were not addressed by reason that the restriction was found to result in a net community cost whereby the Act ought to be repealed in its entirety.

Recommendation:

That the Act be repealed at the first opportunity.

OUTCOME

The previous Government endorsed the recommendations of the review. Legislation to repeal the Act, the *Acts Amendment and Repeal (Competition Policy) Bill 2000*, was introduced to Parliament on 24 May 2000.

RACING RESTRICTION ACT 1917

Terms of Reference: As per clause 5(9) of the Competition Principles Agreement

Conducted by: Office of Racing Gaming & Liquor

Consultation: Invitations to make submissions to the review were made by written advice to persons and organisations with a known interest in the betting and gambling industries in addition to a public advertisement in *The West Australian* and the *Sunday Times*.

Status: Endorsed by the previous Government 6 August 1999

SIGNIFICANT RESTRICTIONS

Restriction:

No race meeting and no horse or pony race for any stake or prize may be held without a licence in writing issued by the Western Australian Turf Club (section 2(1)).

Recommendation:

The provisions contained in the Racing Restrictions Act 1917 which establish centralised control of horse racing are in the public interest and should be retained. Section 2(1) of the Racing Restrictions Act 1917 should be amended to limit the authority of the Western Australian Turf Club to thoroughbred racing. A provision should be inserted into the Racing Restrictions Act 1917 to allow the licensing by the Minister (or other authority) of alternative forms of horse racing where it can be demonstrated that such action is in the public interest. The establishment of a single independent regulator should be considered if it is demonstrated that the Western Australian Turf Club has improperly used its power as controlling authority to favour its own club activities over other clubs under its control.

Restriction:

No trotting meeting and no trotting race for any stake or prize may be held without a licence in writing issued by the Western Australian Trotting Association (section 3(1)).

Recommendation:

The provisions contained in section 3(1) of the Racing Restrictions Act 1917 which establish centralised control of trotting, and vest control in the Western Australian Trotting Association are in the public interest and should be retained. The establishment of a single independent regulator should be considered if it is demonstrated that the Western Australian Trotting Association has improperly used its power as controlling authority to favour its own club activities over other clubs under its control.

Restriction:

Where the Western Australian Turf Club or the Western Australian Trotting Association proposes to make a change in the program of race meetings customarily held in the metropolitan area, and this change may necessitate a reduction or change in the program of races customarily held outside the metropolitan area, any dispute arising in relation to the matter may be referred to the Minister and the Minister may give such directions to the WATC or WATA as the Minister thinks fit (sections 2(2) and 3(2)).

Recommendation:

This restriction is considered to be in the public interest as it serves to mitigate the perceived conflict of interest that exists with the current controlling authorities and should be retained.

Restriction:

The Western Australian Turf Club and Western Australian Trotting Association may hold a limited number of race meetings in aid of any public hospital or other charitable or patriotic purpose (sections 2(2b) and 3(4)).

Recommendation:

With the removal of the restriction on the number of permissible race meetings and the abolition of oncourse betting taxes, this restriction is no longer relevant and the provisions that establish this restriction should be repealed.

OUTCOME

The previous Government endorsed the recommendations of the review. Legislation to amend the Act, the *Acts Amendment and Repeal (Competition Policy) Bill 2000*, was introduced to Parliament on 24 May 2000.

RATES AND CHARGES (REBATES AND DEFERMENTS) ACT 1992

Terms of Reference:	As per clause 5(9) of the Competition Principles Agreement
Conducted by:	State Revenue
Consultation:	Consultation was restricted to the State Revenue Department and Treasury because the legislation had minimal impact on competition.
Status:	Endorsed by the previous Government April 1998

SIGNIFICANT RESTRICTIONS

Restriction:

The restrictions identified in the report refer to the differential treatment afforded pensioners and other eligible persons with respect to certain amounts payable by way of rates and charges. The legislation, in effect, discriminates in favour of pensioners and other eligible persons.

Public interest assessment:

The effects of the restrictions on competition are minimal. Only a very small group of eligible persons could potentially obtain a competitive advantage from the differential treatment received, and where such advantage occurred it would be minor. On the other hand, the removal of pensioner rebates and deferrals in respect of rates and charges would have a significant impact on the standard of living of pensioners and other eligible persons.

An alternative to the way in which the State Revenue Department administered rebates and deferrals to eligible persons was considered. However, it was concluded that this alternative would result in greater administrative cost than the present scheme and therefore would not be in the public interest.

Recommendation:

The report concludes that all of the restrictive elements of the legislation should be retained on public interest grounds

OUTCOME

The previous Government endorsed the recommendations of the review. No changes were made to the act.

RIGHTS IN WATER AND IRRIGATION REGULATIONS 1941

Terms of Reference: As per clause 5(9) of the Competition Principles Agreement

Conducted by: Water and Rivers Commission

Consultation: Consultation has taken place with the Office of Water Regulation and the Water Corporation.

Status: Endorsed by the previous Government
14 August 2000

SIGNIFICANT RESTRICTIONS

Restriction:

Limitations placed on the taking of surface water without a licence.

Public interest assessment:

The legislative provisions giving rise to the restriction were assessed as being in the public interest as it maintains healthy ecosystems and protects the environment and the sustainable use of the resource.

Recommendation:

To retain the licensing restriction on competition.

OUTCOME

The previous Government endorsed the recommendation of the review.

RIGHTS IN WATER AND IRRIGATION (CONSTRUCTION AND ALTERATION OF WELLS) REGULATIONS 1963

Terms of Reference: As per clause 5(9) of the Competition Principles Agreement

Conducted by: Water and Rivers Commission

Consultation: Consultation has taken place with the Office of Water Regulation and the Water Corporation.

Status: Endorsed by the previous Government
14 August 2000

SIGNIFICANT RESTRICTIONS

Restriction:

Licensing restrictions on drilling or altering a well for water.

Public interest assessment:

The effects of the restrictions on competition were adequately considered with a rigorous and transparent assessment carried out on the costs and benefits. The legislative provisions giving rise to the licensing restrictions were assessed as being in the public interest as they play a substantial role in controlling water extraction from groundwater sources to protect the environment, the resource and the sustainable use of the resource.

Recommendation:

To retain the licensing restrictions on drilling or altering wells.

Restriction:

Limitations on who can install, test and repair meters.

Public interest assessment:

The review assessed that the reading, monitoring and repair of meters was not a core function of the Water and Rivers Commission and there was potential for greater cost efficiencies if these services were opened to competition. Alternative means of achieving the objectives of the restrictions were given adequate consideration and in this case the alternative formed the basis for the final recommendation.

Recommendation:

To amend Sections 12A, 12B and 12C to remove the Water and Rivers Commission's exclusive right to the fitting, repair and testing of water meters.

OUTCOME

The previous Government endorsed the recommendations of the review.

RIGHTS IN WATER AND IRRIGATION ACT 1914

Terms of Reference: As per clause 5(9) of the Competition Principles Agreement

Conducted by: Water and Rivers Commission

Consultation: Consultation included calls for submissions in the *West Australian* newspaper and direct contact with major interest groups informing them of the review and inviting them to make submissions.

Status: Endorsed by the previous Government
20 December 1999

SIGNIFICANT RESTRICTIONS

Restriction:

The power of the Water and Rivers Commission to arrest offenders

Public interest assessment:

These powers are in the public interest because they allow the Commission to deal quickly with threats to water supplies or infrastructure from activities which could lead to source contamination, damage to infrastructure and injury to persons.

Recommendation:

To retain the above restrictions on competition

Restriction:

The power of the Water Corporation to arrest.

Recommendation:

The legislation should be amended to remove this power as other service providers cannot avail themselves of this power.

Restriction:

The monopoly power of the Water Corporation to appropriate water for irrigation.

Recommendation:

To amend the legislation by:

- extending the appropriation of water for irrigation to licence holders other than the Water Corporation by including section 39 in Schedule 2 of the Water Services Coordination Act 1995; and
- extending the section 39F appeals provisions to licence holders other than the Water Corporation by listing this section in Schedule 2 of the Water Services Coordination Act 1995.

OUTCOME

The previous Government endorsed the recommendations of the review. Drafting instructions to include the recommended amendments in the proposed *Acts Amendment (Competition Policy) Bill 2001* have been forwarded to Parliamentary Counsel.

ROTTNEST ISLAND AUTHORITY ACT 1987

Terms of Reference:	As per clause 5(9) of the Competition Principles Agreement
Conducted by:	Rottnest Island Authority
Consultation:	The review was advertised in the <i>West Australian</i> newspaper.
Status:	Endorsed by the previous Government November 1999

SIGNIFICANT RESTRICTIONS

Restrictions:

- The membership of the Authority;
- Access to facilities on the island is limited;
- The Authority has the power to grant leases and licences on the island;
- The Authority is prohibited from selling any land on Rottnest;
- The Authority is prevented from allowing anyone to remove any flora, fauna, rock, stone or soil from the island for any commercial purposes;
- Limitation on development and provision of accommodation;
- Requirement for a management plan;
- Enforcement Powers of Rangers;
- Requirement for revenue to at least equal expenditure and application of net profits;
- Building work to be approved by the Authority; and
- Control of Certain Activities on Rottnest.

Public interest assessment:

The effects of the restrictions are generally to restrict activities that can be undertaken on the Island. These activities primarily relate to commercial interests. The impact of the restrictions are primarily to restrict commercial activities where these may compromise the environmental and heritage objectives of the Authority.

The most significant restriction on competition in the Act is the Authority's power to grant leases and licences. These leases enable the Authority to dictate which businesses operate on the Island and grant leases to the most appropriate tenderer. One of the benefits of this policy is to make certain a

continuous supply of goods and services for residents and holiday-makers on the Island by ensuring the successful tenderer is financially sound. The policy minimises any political risk of this occurring.

The lease system also enables the Authority to ensure that commercial interests do not compromise the Authority's other objectives. Finally, the review found that the restrictions contained in the leases are comparable with the strategy of business selection practised on a privately operated holiday island, or a shopping centre. For example, the manager of a shopping centre will seek to influence the mix of retail businesses to make the shopping centre most attractive to customers. The same holds for privately owned islands in the Barrier Reef. The lease documents for Rottnest were compared with those of a suburban shopping centre in the review.

The review finds that generally the restrictions on competition are necessary to achieve the objectives of the legislation. The objectives of the legislation are expressly to preserve the character of the island, to protect the environment and to ensure that Rottnest is accessible as an affordable holiday destination.

Recommendation:

To retain the restrictions on public benefit grounds with the exception of the restriction prescribing the knowledge and experience necessary for appointment as a member of the authority which is to be removed.

The continued need for a Management Plan for Rottnest should be considered in the context of any Government wide review of the use of Management Plans in the management of A-class reserves and the restriction on competition relating to access to facilities and the requirement for revenue to at least equal expenditure and application of net profits are to be considered in the Authority's competitive neutrality review.

OUTCOME

The previous Government endorsed the recommendations of the review. Amendments are needed.

SANDALWOOD ACT 1929 AND REGULATIONS

Terms of Reference:	As per clause 5(9) of the Competition Principles Agreement
Conducted by:	Department of Conservation and Land Management
Consultation:	Submissions to the review were invited through three advertisements in the <i>Western Australian</i> newspaper.
Status:	Endorsed by the previous Government 1998

SIGNIFICANT RESTRICTIONS

Restrictions:

- licensing of industry participants;
- quota on total harvesting of sandalwood;
- harvest quota, area restrictions and tree size restrictions imposed on licences;
- ability to require further information from licence applicants;
- order of granting of licences for private land; and
- harvesting on land being cleared.

Recommendation:

The above restrictions should be retained in the public interest.

Restrictions:

- extension of the period of tenure of licences and make provisions for renewal upon meeting certain performance criteria; and
- greater emphasis on transfer of licences as a means of entry to the industry.

Recommendation:

The restrictions should be administered differently to produce a superior outcome.

Restriction:

Section 3(2) proportional quota (10% of total) on harvest from private land.

Recommendation:

The restriction should be repealed.

Public interest assessment:

The effects of the restrictions have been adequately considered and analysed. The main effects relate to economic/financial, ecologically sustainable development and equity. Alternatives to the restrictions that will fulfil the regulatory objective of achieving sustainable rates of resource use have been considered. The report considers the introduction of longer term and transferable licences to reduce barriers to entry and to also promote stewardship of the resource and investment by licences.

The report concludes that most of the restrictive elements of the legislation should be retained on public interest grounds. The report concludes that extending the tenure of licences may encourage industry participants to be more attuned to sustainable rates of harvesting the resource. The report also concludes that the limit on harvesting sandalwood from private land (10 per cent of the total harvested) is arbitrarily set. Consequently, the quantity of sandalwood that can be sustainably harvested from private land should be researched and the quota set accordingly.

OUTCOME

The previous Government endorsed the recommendations of the review. The amendment required to implement the recommendations was included in the *Acts Amendment and Repeal (Competition Policy) Bill 2000* introduced to Parliament on 24 May 2000.

SECURITY AND RELATED ACTIVITIES (CONTROL) ACT 1996

Terms of Reference: As per clause 5(9) of the Competition Principles Agreement

Conducted by: Western Australian Police Service

Consultation: No consultation was undertaken for this review. However the Police Security Liaison Committee, which was set up for the on going review of the legislation, sought comment on the legislation from the public and representatives of the security industry.

Status: Endorsed by the previous Government 2000

SIGNIFICANT RESTRICTIONS

Restrictions:

- licensing of persons and businesses covered by the Act, operating restrictions on businesses and advertising of security services;
- those creating barriers to entry into the industry through licensing of security and inquiry activities;
- those imposing conditions that control a business, for example by making vehicle markings and uniforms subject to approval by the Commissioner of Police, by directing what business records are to be maintained and by requiring business license holders to reside in the State;
- those putting restrictions on advertising; and
- those that provide exemptions from the legislation for certain classes of persons.

Public interest assessment:

The security and related industries were assessed as needing statutory control to ensure high standards of integrity and to instil public confidence, especially in the areas of crowd control. In particular more industry accountability was required together with the means to remove undesirable persons from the industry. The review concluded that the legislation is effective and provides the necessary controls to maintain and improve the industry.

Recommendation:

To retain the above restrictions.

Restriction:

The requirement to have licences endorsed with the employer's name(s).

Public interest assessment:

The review found that, as both employees and employers are required to be licensed and thus meet an approved standard, the need to have an employer (the agent) endorsed on an employee's licence is unnecessary.

Recommendation:

To remove the above restriction.

OUTCOME

The previous Government endorsed the recommendations of the review.

SMALL BUSINESS DEVELOPMENT CORPORATION ACT 1983

Terms of Reference: As per clause 5(9) of the Competition Principles Agreement

Conducted by: Dr Ray Challen of Environmental Resources Management Australia Pty Ltd

Consultation: Intra-agency and inter-agency consultation

Status: Endorsed by the previous Government
14 August 2000

SIGNIFICANT RESTRICTIONS

Restriction:

The services and grants provided by the Small Business Development Corporation are only available to "small business" as defined by the Act.

Public interest assessment:

The review considers that while the restriction has the potential to be discriminatory, in practice the Corporation does not generally discriminate between who it provides its small business advisory services to. The advisory services are, by their nature, demanded mainly by prospective or newly established small businesses. Larger businesses or longer established businesses generally have the wherewithal or networks of contacts to avail themselves of such information.

The effects of the restrictions on competition were adequately considered and were found to have no practical importance.

Recommendation:

There are no restrictions on competition imposed by the Act and legislative amendment is not required.

OUTCOME

The previous Government endorsed the recommendations of the report.

STATE SUPPLY COMMISSION ACT 1991 AND REGULATIONS

- Terms of Reference: As per clause 5(9) of the Competition Principles Agreement
- Conducted by: Minister for Works and Services
- Consultation: A notice advertising the review and advertising submissions was placed in *The West Australian* on 10 January 1998. The Commission also wrote to a number of organisations informing them of the review and their opportunity to make submissions. The Commission received feedback from two government agencies: Fremantle Port Authority and the Public Sector Management Office.
- Status: Endorsed by the previous Government November 1998

SIGNIFICANT RESTRICTIONS

Restrictions:

- Conferral of competitive advantages or disadvantages on public authorities through having access to, or being forced to comply with government purchasing arrangements;
- Restrictions on participation of potential suppliers/buyers in government trading;
- Discrimination between potential suppliers competing for government contracts; and
- Interference with fair and competitive pricing in government purchasing and disposal activities.

Public interest assessment:

In general, the effects of the restrictions have been adequately considered and analysed. A heavy weighting was applied to regional development versus other objectives when weighing the public benefits and costs of some supply policies.

It is quite likely that if a lesser weighting were applied to regional development, in the assessment of public interest, rather than retaining certain supply policies they may have been revised or even repealed. Such policies include Supply Policy 1.2 (Supply of Goods or Services), Supply

Policy 3.8 (Buy Local), Supply Policy 6.4 (Countertrade) and the Regional Buying Compact.

As an alternative to the State Supply Commission arranging and coordinating supply on behalf of public authorities the review discussed individual public authorities assuming responsibility for their own supply functions. Under such an arrangement the role of supply policies would be altered from prescriptive procedures to standards that must be met by public authorities in developing their own supply procedures. Supply management plans would replace procedure manuals, and annual supply reports replaced by review and audit reports relating to these procedures. Alternatives to a number of specific supply policies were discussed.

Recommendation:

That common-use contracts be retained but altered to allow the requirement for mandatory use to be waived on a case-by-case basis where it is in the public interest.

- Supply Policy 1.7: Devolved Purchasing. This policy will become redundant under the accreditation scheme and will be repealed.
- Supply Policy 1.11: Procurement Planning. This policy will be altered to reflect a performance standard and existing requirements will become a best practice guideline.
- Supply Policy 3.3: Quality Assurance. This policy will be repealed or altered to reflect a performance standard.
- Supply Policy 3.5: Reverse Engineering. This policy will be repealed or relegated to the status of a non-mandatory guideline.
- Supply Policy 4.1: Forward Procurement Planning. Will be either repealed or altered to reflect a performance standard.

All other restrictions were found to be in the public interest and recommended for retention.

OUTCOME

The previous Government endorsed the recommendations of the review. Amendments are required.

STATE TRADING CONCERNS ACT 1916

Terms of Reference:	As per clause 5(9) of the Competition Principles Agreement
Conducted by:	Treasury
Consultation:	Intra-agency and inter-agency consultation
Status:	Endorsed by the previous Government May 1998

SIGNIFICANT RESTRICTIONS

Restriction:

The Act prohibits the Government from entering into or establishing any trading concern, except where the entity has been established under specific enabling legislation; has been established as a 'trading concern' under the Act; or is a department and has been authorised by the Treasurer under the Act to generate revenue from specified activities.

Public interest assessment:

While it restricts the freedom with which government agencies can enter markets for goods and services it also reduces the risk that Government will become involved in inappropriate ventures.

Recommendation:

That the restriction be retained.

OUTCOME

The previous Government endorsed the recommendations of the review. No changes were made.

STATUTORY CORPORATIONS (LIABILITY OF DIRECTORS) ACT 1996 AND AMENDMENT BILL 1998

Terms of Reference: As per clause 5(9) of the Competition Principles Agreement

Conducted by: Attorney General

Consultation: Intra-agency and inter-agency consultation

Status: Endorsed by the previous Government
8 November 1999

SIGNIFICANT RESTRICTIONS

Restriction:

The duties and potential liabilities of directors under Part 3 of the Act do not apply to all statutory corporations but only to those listed in Schedule 1 of the Act.

Public interest assessment:

Assessment of the effects of the potential restriction indicated that it does not give rise to significant costs or benefits. In view of this the Act was considered to not give rise to a restriction on competition. The proposed Bill imposes similar constraints on directors of statutory corporations as apply to private corporations, and therefore does not give rise to restrictions on competition.

Recommendation:

Because the Act does not contain restrictions on competition, it is recommended that the Act be retained without amendment.

OUTCOME

The previous Government endorsed the conclusion of the report that, in view of the absence of restrictions on competition, no amendments to the Act or proposed Bill were required in order to comply with the Competition Principles Agreement.

SUBIACO REDEVELOPMENT ACT 1994

Terms of Reference:	As per clause 5(9) of the Competition Principles Agreement
Conducted by:	Minister for Planning
Consultation:	The views of interested parties were sought directly.
Status:	Endorsed by the previous Government May 1998

SIGNIFICANT RESTRICTIONS

Restrictions:

- redevelopment control of the area;
- the compulsory taking of land;
- subdivision approval from Minister rather than the State Planning Commission; and
- Treasurer's guarantee of loans.

Public interest assessment:

The report has found that effects of the restrictions on competition are relatively minor. The report concludes that the restrictive elements of the legislation need to be retained to achieve the objectives of the Act. The report also finds that there would be substantial costs associated with removing the restrictions, particularly at this stage of the Authority's work.

There are no acceptable alternatives to achieving the objectives of the three restrictions relating to the powers of the Authority. The powers are necessary to remedy the existing environmental problems and achieve redevelopment consistent with the vision for the area. At this stage of the Authority's activities, it would not be feasible to modify the regulatory framework. The restrictions relating to the internal running of the Authority stem from the Authority's status as a government agency and therefore cannot be removed.

Recommendation:

To retain the restrictions on the grounds of public interest.

OUTCOME

The previous Government endorsed the recommendations of the review. No changes were made to the Act.

SUITORS FUND ACT 1964

Terms of Reference: As per clause 5(9) of the Competition Principles Agreement

Conducted by: Attorney General

Consultation: Submissions were invited directly from interested parties.

Status: Endorsed by the previous Government
1 January 1999

SIGNIFICANT RESTRICTIONS

Restriction:

Differential treatment of large companies and Crown Agencies.

Public interest assessment:

All litigants are required to contribute to a fund which is used to defray legal costs where a court decision is reversed on a 'point of law' appeal or where the proceedings are aborted. However, companies with a paid up capital of \$200 000 or more and Crown agencies are barred from access to the Fund to recover such legal costs.

Recommendation:

To remove the bar on companies with paid up capital of \$200,000 or more.

OUTCOME

The previous Government endorsed the recommendations of the review. Amendments will be made to the act.

SWAN RIVER TRUST ACT 1988 AND REGULATIONS

Terms of Reference:	As per clause 5(9) of the Competition Principles Agreement
Conducted by:	Water and Rivers Commission
Consultation:	Consultation has taken place with the Office of Water Regulation, the Water Corporation, the Swan River Trust and the Western Australian Municipal Authorities Association.
Status:	Endorsed by the previous Government 14 August 2000

SIGNIFICANT RESTRICTIONS

Restrictions:

- limitations on development activity that can be undertaken in the area under the control of the Swan River Trust; and
- limitations on non-development activity (including advertising) that can be undertaken in the area under the control of the Swan River Trust.

Public interest assessment:

The effects of the restrictions on competition were adequately considered with a rigorous and transparent assessment carried out on the costs and benefits. Where appropriate, alternative means of achieving the objectives of the restrictions were given adequate consideration. The legislative provisions giving rise to the two restrictions were assessed as being in the public interest because the benefits of retaining the environmental amenity of the river outweighed the costs associated with restricting commercial activities.

Recommendation:

The two restrictions should be retained.

OUTCOME

The previous Government endorsed the recommendations of the review.

TAXI ACT 1994 AND REGULATIONS, AND AMENDMENT REGULATIONS 1997

Terms of Reference:	As per clause 5(9) of the Competition Principles Agreement
Conducted by:	BSD Consulting and the Boesch Group
Consultation:	<p>A steering committee was established to consider the review's findings</p> <p>Significant industry consultation was carried out including a survey of public opinion by the Boshe Group and an independent report by BSD Consulting.</p>
Status:	Endorsed by the previous Government 22 November 1999

SIGNIFICANT RESTRICTIONS

Restrictions

Several restrictions were identified by the BSD review. For example, the cap on retail fares, restrictions on negotiating fares, driver training, compulsory acceptance of fare paying passengers, the role of the Taxi Dispatch Service, leasing arrangements on plates, fit and proper persons test for drivers and plate owners, record keeping restrictions, servicing of outlying areas, the Taxi User Subsidy Scheme, safety standards, and restrictions on licence plate availability.

Recommendations

The Steering Committee accepted, and the Government is implementing, most of the recommendations of the BSD legislation review which include:

- retaining a cap on retail fares;
- removing the restriction on negotiating fares by telephone but retain them for the rank and hail markets;
- introducing a comprehensive driver training regime;
- removing the requirement to inform the Taxi Dispatch Service of the driver's whereabouts;
- removing restrictions on lease fees charged by plate holders;
- retaining restrictions requiring plate owners to be 'fit and proper' persons;
- retaining record keeping requirements;

- retaining Taxi User Subsidy Scheme vouchers so that government can continue to subsidise fares of disabled people; and
- maintaining and even improving the existing safety standards.

The major recommendation by BSD Consulting that was not supported by the Steering Committee is the buy-back of taxi plates and the full deregulation of plate numbers. The Committee recognised that there is a public interest case for deregulation. However, it recommended, and the Government at that time agreed, not to proceed with full deregulation, but to firstly implement those reforms which were unambiguously in the public interest.

Reasons for not accepting BSD's buy-back and deregulation option include:

- the difficulty of financing a plate buy back. The paying back of a loan through increased licence fees as the BSD report proposed, could be difficult to arrange and the bulk of the benefits to consumers would be delayed until borrowed funds had been payed back; and
- the survey indicated that the value for money of taxi services was rated as acceptable to very good by 85 per cent of those surveyed, while the need for improvement of promptness of taxi service and improvement of driver service was recognised by the majority of those surveyed.

While no legislative changes were recommended there were a number of recommendations to make administrative changes.

OUTCOME

The previous Government endorsed the recommendations of the review.

TRANSPORT COORDINATION ACT 1966

Terms of Reference:	As per clause 5(9) of the Competition Principles Agreement
Conducted by:	The review was conducted by an independent consultant for the Steering Committee comprising an independent chair, and representatives from the Department of Transport and Treasury.
Consultation:	Organisations and individuals likely to have an interest in the regulation of transport services or the licensing of public vehicles were invited to make submissions to the review and an advertisement inviting submissions was placed in The West Australian newspaper. A discussion paper was made available for the purpose of providing background information on National Competition Policy, the review process and the potential restrictions on competition arising in the legislation.
Status:	Endorsed by the previous Government November 2000

SIGNIFICANT RESTRICTIONS

Restrictions:

Fifty eight potential restrictions on competition in the legislation were identified. These are mostly related to general provisions for the Minister to borrow funds and make payment of subsidies to providers of transport services. These also include a range of provisions, powers and requirements related to the licensing of vehicles used for commercial purposes and the regulation of transport services provided with these vehicles.

In its weighing of benefits and costs, the review has not addressed the net public cost of the loss in total revenue of around \$3.4 million annually that would arise from the removal of this licensing provision. Treasury recommends that this loss of revenue should be absorbed in the Department of Transport budget.

Recommendations:

- Change Part III of the Transport Co-ordination Act 1966. The proposed changes are substantial and consideration should be given to a complete re-drafting of this Part of the Act. Minimum changes to the Act are described as follows for each Division of Part III;

Division 1 - General Provisions Relating to the Licensing of Public Vehicles

- amendment of section 19 to remove the provision for the Minister to grant exemptions to requirements for licensing;
- repeal of section 20 which imposes the general requirement for licensing of public vehicles; and
- amendment of Section 21 to limit licence fees to levels sufficient to recover costs incurred in administering the relevant license system and associated regulatory activities.

Division 2 - Licenses for omnibuses

- repeal of section 24 and replacement with provisions that authorise the Minister to require licensing of omnibus vehicles:
 - of a particular class or classes;
 - to be used in a particular area;
 - to be used on a particular route; or
 - to be used for a particular purpose;
- where this is determined to be in the public interest in respect of:
 - the protection of public safety;
 - improved public transport services through control of service characteristics (fares, routes, timetables and pick-up points);
 - reducing the cost to the public of services either provided under contract to the Minister or subsidised by the Minister; and/or
 - the promotion of beneficial competition amongst providers of omnibus services through the identification, accreditation and monitoring of standards of vehicles and business practice;
- repeal of Subsection 27(2a) relating to the power of the Minister to appoint stopping places for the changing of vehicle crew;
- amendment of Subsection 29(1) to remove redundant provisions relating to the number of passengers able to be carried at any one time on the vehicle; and
- repeal of Subsection 30(2) relating to the payment of moneys in the transfer of omnibus licenses.

Division 3 - Commercial Goods Vehicles

- repeal of Section 33 and replacement with provisions that authorise the Minister to require licensing of commercial goods vehicles:
 - of a particular class or classes;
 - to be used in a particular area;
 - to be used on a particular route; or
 - to be used for a particular purpose;where there is determined to be in the public interest in respect of the protection of public safety;

- repeal of Subsection 33(2) and 33(4) relating to the granting of exemptions from licensing requirements;
- repeal of Section 36 relating to matters to be taken into consideration in the granting or refusing of a license;
- repeal of Section 38(d) providing for a licence to stipulate the load able to be carried by a vehicle;
- repeal of Subsection 39(1)(a) relating to the power of the Minister to attach conditions to licenses that restrict the routes on which, or areas in which, licensed vehicles may be operate;
- repeal of Subsection 41(1) relating to requirements for permits;
- repeal of Section 42B relating to rates of remuneration for subcontractors operating commercial good vehicles from south to north of 26° latitude; and
- repeal of Section 42C relating to authorisation of persons to operate a commercial goods vehicle from south to north of 26°latitude.

Also:

- provisions for licensing aircraft were removed which resulted in a loss in revenue of around three million dollars annually; and

The report recommended amendments to provisions for aircraft licensing as below:

Division 4 – Aircraft

- repeal of Section 43 and replacement with provisions that authorise the Minister to require licensing of aircraft:
 - of a particular class or classes;
 - to be used in a particular area;
 - to be used on a particular route; or
 - to be used for a particular purpose;where there is determined to be in the public interest in respect of reducing the cost to the public of services either provided under contract to the Minister or subsidised by the Minister;
- repeal of Section 43B relating to permits for aircraft; and
- repeal of Section 47(d) relating to attachment of conditions to licences.

Public interest assessment:

The effects of the restrictions on competition were adequately analysed in the report. Both positive and negative effects of the restrictions have been considered.

OUTCOME

The previous Government endorsed the recommendations of the review. Administrative changes have already been introduced that will phase out aircraft licence fees over the next three years.

TRUSTEE COMPANIES ACT 1987

Terms of Reference: As per clause 5(9) of the Competition Principles Agreement

Conducted by: Attorney General

Consultation: The peak body for trustee companies in Western Australia was consulted. The eight trustee companies in Western Australia are members of the Association.

Status: Endorsed by the previous Government
10 May 1998

SIGNIFICANT RESTRICTIONS

Restriction:

- directors are jointly liable for the proper discharge of duties of the corporation;
- a limit on the borrowings and loans a trustee company can make;
- potential requirement for additional audits or reports; and
- a limit on the acquisition of voting shares by persons.

Recommendation:

The above restrictions should be retained on the grounds of public interest.

Restriction:

The barrier to entry on trustee companies.

Recommendation:

This restriction should be lessened by requiring trustee companies to lodge a proof of indemnity rather than gaining approval from the Governor.

Public interest assessment:

The effects of the restrictions on competition have been adequately analysed in the report. Both positive and negative effects of the restrictions have been considered. The report concludes that the public interest is best served by all potential entrants to the trustee market be treated equally and therefore the special demands on officers and directors of trustee corporations are justified.

The nature of the role of a trustee company necessitates that a certain level of diligence and care be provided by the trustees.

OUTCOME

The previous Government endorsed the recommendations of the review. Amendments delayed until completion of national laws.

UNIVERSITY ACTS

- **MURDOCH UNIVERSITY ACT 1973**
- **UNIVERSITY OF WESTERN AUSTRALIA ACT 1911**
- **CURTIN UNIVERSITY OF TECHNOLOGY ACT 1966**
- **EDITH COWAN UNIVERSITY ACT 1984**
- **UNIVERSITY OF NOTRE DAME AUSTRALIA ACT 1989**

Terms of Reference: As per clause 5(9) of the Competition Principles Agreement

Conducted by: Office of Higher Education

Consultation: There was broad consultation with the five universities in December 1996 and again in June 1997. Subsequently the review has been considered by Vice Chancellors.

Status: Endorsed by the previous Government February 1999

SIGNIFICANT RESTRICTIONS

Restrictions

- the power to award degrees and other awards;
- the power to make by-laws, Statutes and regulations;
- provisions within the Act to have land vested in them and to dispose of land subject to the approval of the Governor;
- exemptions from a range of State taxes and charges;
- broad investments powers;
- provision for Treasury guarantee for loans; and,
- the requirement to comply with the Financial Administration and Audit Act 1985.

Public interest assessment:

In the case of the Edith Cowan University Act it was assessed that the restrictive investment powers provisions are not in the public interest as they are more restrictive than those that apply to other universities.

Recommendation:

To amend the investment provisions of the Edith Cowan University Act 1984 to be consistent with those of other universities and to retain the other restrictions found to be in the public interest. The report also recommended amendments or draft legislation which would enable the Minister to establish an accreditation process for private providers of higher education if this is considered appropriate by the Minister.

OUTCOME

The previous Government endorsed the recommendations of the review. Amendments to the *Edith Cowan University Act 1984* were included in the *Acts Amendment and Repeal (Competition Policy) Bill 2000* introduced to Parliament on 24 May 2000.

UNIVERSITY COLLEGES ACT 1926

Terms of Reference:	As per clause 5(9) of the Competition Principles Agreement
Conducted by:	Office of Higher Education
Consultation:	Consultation has occurred between the reviewers, the University of Western Australia and the Western Australian Higher Education Council.
Status:	Endorsed by the previous Government February 1999

SIGNIFICANT RESTRICTIONS

Restrictions:

- provisions for access to university lands;
- provisions to transfer vested land to freehold land; and
- provisions controlling the use of land.

Public interest assessment:

The review concluded that the restrictions are in the public interest given the quality of pastoral care provided to students by university colleges.

Recommendations:

The above restrictions should be retained because they are in the public interest. The review also recommended that commercial activities of university colleges be examined as part of the competitive neutrality reviews of university activities.

OUTCOME

The previous Government endorsed the recommendations of the review. No changes were made to the act.

VALUATION OF LAND ACT 1987

VALUATION OF LAND REGULATIONS 1979

Terms of Reference: As per clause 5(9) of the Competition Principles Agreement

Conducted by: Valuer Generals Office

Consultation: Submissions were invited by public advertisement and directly from interested parties following release of an information paper.

Status: Amend - Introduced to Parliament 24 May 2000

SIGNIFICANT RESTRICTIONS

Restrictions:

- Any person who is employed by, or who is a member of, any rating or taxing authority cannot be engaged under contract as a valuer by the Valuer General;
- A person employed in the administration of the Act is prohibited from engaging in any private valuation work without the written consent of the Valuer General;
- Approval from the Valuer General must be obtained by rating and taxing authorities to enable them to undertake valuation activities for rating and taxing purposes, and the Valuer General may attach conditions to this approval;
- The Valuer General has immunity for any act or omission carried out in good faith and relating to activities under the Act; and
- Fees may be levied on members of the public, including private valuers, for copies of, or extracts from, valuation rolls.

Public interest assessment:

Each of the restrictions provide a net public benefit. It was concluded that there are not less restrictive or less costly alternative means for achieving the benefit of each of those restrictions.

Recommendation:

To retain the above restrictions.

Restriction:

Any person making valuations for rating and taxing purposes must be licensed under the Land Valuers Licensing Act 1978 or qualified for membership of the Institute.

Public interest assessment:

The costs and benefits of this restriction were not assessed in the review because this issue is addressed in the National Competition Policy (NCP) Legislation Review of the *Land Valuers Licensing Act*.

Recommendation:

The Act should be amended to no longer require that a person making valuations for rating and taxing purposes must be licensed under the Land Valuers Licensing Act 1978 or qualified for membership of the Australian Property Institute (“the Institute”).

Restriction:

The Valuer-General shall be qualified for membership of the Institute.

Public interest assessment:

Consideration of alternative means of providing the public benefits of the restriction led to the conclusion that it should be less narrowly defined.

Recommendation:

The Act should be amended to require that the Valuer-General must have a high level of qualifications and experience in the valuation of land, but need not be qualified for membership of the Institute.

Restriction:

The Valuer General’s Office has powers to obtain information for the purpose of making valuations that exceed the powers available to private valuers.

Public interest assessment:

In regard to restriction 6, it was considered that making information available to the public may reduce the chances of Valuer-General’s Office having competitive advantages over private valuers. It was concluded that the powers for the collection of information should be amended to enable a greater flow of information – where this is in the public interest.

Recommendation:

The Act should be amended to require that on a regular basis the Valuer-General furnish the Minister with details of the types of information collected under the Act, and to enable the Minister to authorise the information being made available to the public.

OUTCOME

The previous Government endorsed the recommendations of the review. The amendments were included in the *Acts Amendment and Repeal (Competition Policy) Bill 2000* introduced to Parliament on 24 May 2000.

VOCATIONAL EDUCATION AND TRAINING ACT 1996

Terms of Reference: As per clause 5(9) of the Competition Principles Agreement

Conducted by: An independent consultant conducted the review with an External Advisory Group established by the Department of Training overseeing the evaluation of the benefits and costs associated with the identified restrictions.

Consultation: Intra-agency and Inter-agency consultation

Status: Endorsed by the previous Government
8 November 1999

SIGNIFICANT RESTRICTIONS

Restrictions:

- effective Ministerial control of the size and content of the vocational, education and training market;
- effective Ministerial control of the commercial activities of the Colleges;
- registration of training providers;
- control of management of College funds; and
- miscellaneous provisions, eg investments subject to Financial Administration and Audit Act 1985.

Public interest assessment:

The effects of the restrictions have been identified and analysed thoroughly. While not all effects were quantified, the effects were listed and estimated qualitatively where quantitative analysis was not appropriate. Alternative means of achieving the objectives of the existing restrictions were given adequate consideration but were found to offer less net public benefit. The review concludes that the restrictions on competition are minimal and that the public benefits arising from the restrictions outweigh the costs.

Recommendation:

To retain the current provisions of the Act.

OUTCOME

The previous Government endorsed the recommendations of the review.

WA LAND AUTHORITY ACT 1992

Terms of Reference:	As per clause 5(9) of the Competition Principles Agreement
Conducted by:	LandCorp
Consultation:	Submissions were invited directly from interested parties.
Status:	Amendments - Bill Passed 6 July 2000

SIGNIFICANT RESTRICTIONS

Restriction:

The WA Land Authority's exemption from rates and taxes.

Recommendation:

That the Authority be subject to a tax equivalent regime and pay to the Treasurer an amount equivalent to all rates and taxes imposed on private land developers that the Authority is currently not obliged to pay.

Restriction:

The Authority's power to compulsorily acquire land.

Recommendation:

To remove this section of the act.

Restriction:

The requirement to seek pre-approval from the Minister on contracts.

Recommendation:

To amend that legislation to allow contracts to be agreed subject to Ministerial approval.

Restriction:

Restrictions on the Authority's retail activities in the higher end of the residential land market.

Recommendation:

Exempting surplus public sector land assets and urban renewal projects from this restriction.

[public interest assessment necessary]

OUTCOME

The previous Government endorsed the recommendations of the review. The amendment Bill was passed on 06/07/00.

WA TREASURY CORPORATION ACT 1986

WA TREASURY CORPORATION AMENDMENT BILL 1997

Terms of Reference:	As per clause 5(9) of the Competition Principles Agreement
Conducted by:	WA Treasury Corporation
Consultation:	Consultation was conducted with the Western Australian Treasury Corporation and Treasury.
Status:	Endorsed by the previous Government 3 March 1998

SIGNIFICANT RESTRICTIONS

Restriction:

The Act provides an exemption to the Corporation from State duties, imposts or taxes. The amendment Bill weakened this restriction by removing the Corporation's outright exemption, but allows the Treasury to grant an exemption where it is considered to be in the public interest.

Public interest assessment:

The review found that the potential effects of the Treasurer using his discretion to exempt the Corporation from certain taxes, duties or imposts were minor. The Treasurer is only likely to grant an exemption if the securities issued by the Corporation are at an unfair competitive disadvantage to securities issued by the Commonwealth and other government borrowers.

Recommendation:

To retain the restriction.

OUTCOME

The previous Government endorsed the recommendations of the review.

WESTERN AUSTRALIAN GREYHOUND RACING AUTHORITY ACT 1981

Terms of Reference: As per clause 5(9) of the Competition Principles Agreement

Conducted by: Office of Racing, Gaming & Liquor

Consultation: Persons and organisations with a known interest in the betting and gambling industries were invited to make submissions to the review, in addition to a public advertisement in *The West Australian* and the *Sunday Times*.

Status: Endorsed by the previous Government
8 November 1999

SIGNIFICANT RESTRICTIONS

Restriction:

No more than 60 race meetings can be conducted per year within a 50 kilometre radius of the Perth Town Hall, or at any one racing venue unless the Minister approves otherwise.

Recommendation:

To repeal provisions of the Act limiting the number of meetings the Western Australian Greyhound Racing Authority (WAGRA) may hold.

Restriction:

Greyhound races may only be conducted by WAGRA or by a greyhound racing club registered by WAGRA, and then only at places and on occasions approved by WAGRA.

Public interest assessment:

The effects of each restriction were adequately considered and a rigorous and transparent assessment was carried out on their costs and benefits. Alternative means of achieving the objectives of the existing restrictions were given adequate consideration but were found to offer less net public benefit.

Recommendation:

The provisions contained in the Western Australian Greyhound Racing Authority Act which establish centralised control of greyhound racing are in the public interest and should be retained.

However, the establishment of an independent regulator should be considered if it is demonstrated that the Authority has improperly used its power to favour its racing activities.

OUTCOME

The previous Government endorsed the recommendations of the review. Legislation to amend the Act, the *Acts Amendment and Repeal (Competition Policy) Bill 2000*, was introduced to Parliament on 24 May 2000.

WATER (DIXVALE AREA AND YANMAH AREA) LICENSING REGULATIONS 1974

Terms of Reference: As per clause 5(9) of the Competition Principles Agreement

Conducted by: Water and Rivers Commission

Consultation: A draft of the review report and an explanatory summary was sent to the Water Corporation, Office of Water Regulation and the 28 irrigators currently holding licences on the two waterways.

Status: Endorsed by the previous Government
14 August 2000

SIGNIFICANT RESTRICTIONS

Restriction:

Differential treatment of irrigators in the Dixvale and Yanmah catchments regarding dispute resolution compared to other catchments in Western Australia.

Public interest assessment:

The effects of the restrictions on competition were adequately considered with a rigorous and transparent assessment carried out on the costs and benefits. It was concluded that there was no public benefit in this irrigated area having a different set of dispute resolution regulations to other irrigation areas in Western Australia.

Recommendation:

To repeal the Water (Dixvale Area and Yanmah Area) Licensing Regulations 1974.

Restriction:

Licensing of irrigators.

Public interest assessment:

Where appropriate, alternative means of achieving the objectives of the restrictions were given adequate consideration. For example, the review highlighted that the licensing regulations would be made redundant once the amendments to the *Rights in Water and Irrigation Act 1914* become law.

This alternative formed the basis for the final recommendation to repeal the licensing regulations.

Recommendation:

To repeal the licensing regulations.

OUTCOME

The previous Government endorses the recommendation of the review to repeal the Water (Dixvale Area and Yanmah Area) Licensing Regulations 1974.

WATER AGENCIES (CHARGES) BY-LAWS 1987

LAND DRAINAGE REGULATIONS 1978

LAND DRAINAGE (RATING GRADES) REGULATIONS 1986

WATER AGENCIES (INFRINGEMENTS) REGULATIONS 1994

WATER AGENCIES (ENTRY WARRANT) REGULATIONS 1985

Terms of Reference: As per clause 5(9) of the Competition Principles Agreement

Conducted by: Office of Water Regulation

Consultation: An advertisement was placed in the *West Australian* newspaper calling for submissions and major interest groups were informed of the review and invited to make submissions.

Status: Endorsed by the previous Government
20 December 1999

SIGNIFICANT RESTRICTIONS

Restrictions:

- the exemption from paying rates for certain activities, subject to those exemptions on specific land uses that are imposed for social reasons, continuing to be subject to the formal and transparent community service obligation payment;
- provisions whereby land is subject to water supply, sewerage, drainage and irrigation charges even if it is not actually connected to the system and where owners or occupiers do not actually use the system;
- the exemption from paying charges for pensioners; and
- the Water Agencies (Entry Warrant) Regulations.

Public interest assessment:

The effects of the restrictions on competition were adequately considered with a rigorous and transparent assessment carried out on the costs and benefits. The legislative provisions above were assessed as being in the public interest for reasons of social equity and good infrastructure planning.

Recommendation:

To retain the above restrictions on competition.

Other “housekeeping” recommendations

To amend the legislation by:

- amending the grading system in the Land Drainage (Rating Grades) Regulations to be consistent with the recommendation in the main review to deal with all charges through the Water Agencies (Powers) Act 1984;
- amending the Land Drainage Regulations to be consistent with the recommendation in the main review to deal with all charges through the Water Agencies (Powers) Act 1984; and
- amending the regulations of the Water Agencies (Infringements) Regulations 1994 to be consistent with the Water Agencies (Powers) Act 1984 allowing the Water and Rivers Commission the ability to delegate the authority for issuing infringements.

OUTCOME

The previous Government endorsed the recommendations of the review. Drafting instructions for the amendments are currently being developed by the Water Corporation in consultation with the Office of Water Regulation.

WATER AGENCIES (POWERS) ACT 1984

Terms of Reference:	As per clause 5(9) of the Competition Principles Agreement
Conducted by:	Office of Water Regulation
Consultation:	An advertisement was placed in the <i>West Australian</i> newspaper calling for submissions and major interest groups were informed of the review and invited to make submissions.
Status:	Endorsed by the previous Government 20 December 1999

SIGNIFICANT RESTRICTIONS

Restriction:

The power to override local government town plans.

Public interest assessment:

The effects of the restrictions on competition were adequately considered with a rigorous and transparent assessment carried out on the costs and benefits. The legislative provisions giving rise to the above restrictions were assessed as being in the public interest since the benefits of protecting the water resource and allowing water service delivery plans to be fulfilled outweighed the costs of constraining some development options.

Recommendation:

To retain the above restriction on competition

Other "housekeeping" recommendations

To amend the legislation by:

- repealing section 41A and set water supply charges for country land based on the recommendation of the Water Corporation and approval of the Minister;
- repealing section 41B removing the cap on increases in water supply charges on country land;
- amending section 41 to allow the Water Corporation to exempt a customer from the application of by-laws;
- extending the power to partially acquire land to other licence holders;

- extending the procedures and conditions applying to the Water Corporation for damage liability to other licence holders; and
- extending the power to issue infringement notices to licence holders other than the Water Corporation and the Water and Rivers Commission.

OUTCOME

The previous Government endorsed the recommendations of the review. Drafting instructions to include the recommended amendments in the proposed *Acts Amendment (Competition Policy) Bill 2001* have been forwarded to Parliamentary Counsel.

WATER AGENCIES RESTRUCTURE (TRANSITIONAL AND CONSEQUENTIAL PROVISIONS) ACT 1995

Terms of Reference: As per clause 5(9) of the Competition Principles Agreement

Conducted by: Office of Water Regulation

Consultation: All major stakeholders were consulted during the review including the Water and Rivers Commission, Water Corporation, Aqwest, Busselton Water Board and the Western Australian Municipal Association.

Status: Endorsed by the previous Government
7 March 1999

SIGNIFICANT RESTRICTIONS

Restrictions:

No restrictions on competition could be identified in the Act.

Recommendation:

Because the Act does not contain restrictions on competition, it is recommended that the Act be retained without amendment.

OUTCOME

The previous Government endorsed the recommendations of the review.

WATER AND RIVERS COMMISSION ACT 1995

Terms of Reference: As per clause 5(9) of the Competition Principles Agreement

Conducted by: Water and Rivers Commission

Consultation: Consultation has taken place with the Office of Water Regulation and the Water Corporation.

Status: Endorsed by the previous Government
14 August 2000

SIGNIFICANT RESTRICTIONS

Restriction:

There were no restrictions on competition identified in the legislation.

Recommendation:

No changes should be made to the Act.

OUTCOME

The previous Government endorsed the recommendations of the review.

WATER BOARDS ACT 1904 AND BY-LAWS

Terms of Reference:	As per clause 5(9) of the Competition Principles Agreement
Conducted by:	Minister for Water Resources
Consultation:	Views of Aqwest (Bunbury Water Board), Busselton Water Board, and the Office of Water Regulation were canvassed through their submissions to the review. In addition, the opportunity for individuals and organisations to comment on this review was provided through advertisements placed in newspapers with distribution both State-wide and in the South West region.
Status:	Endorsed by the previous Government 14 August 2000

SIGNIFICANT RESTRICTIONS

Restrictions:

- the limited areas in which Water Boards are allowed to provide services;
- the exclusion of Water Boards from the provision of sewerage, drainage and irrigation services;
- the prevention of Water Boards from making a profit;
- the prevention of Water Boards from entering into business arrangements; and
- conditions and restrictions relating to the remuneration of non-executive Board members.

Recommendations:

As an interim measure to facilitate immediate competition in the water industry in Western Australia, amend the legislation to:

- enable Water Boards to provide services outside their Water Area;
- allow Water Boards to provide a full range of water services (including sewerage, drainage and irrigation);
- enable Water Boards to make a profit;
- enable Water Boards to enter into business arrangements;

- enable remuneration of non-executive Board members in a manner consistent with other service providers in the water industry;
- remove the requirement for Ministerial authorisation for the construction of works and replace with a requirement for Ministerial approval of Boards' global capital investment programs on an annual basis; and
- substitute the Coordinator for Water Services for the Minister in section 62(2) relating to extending services to occupiers of land outside existing water areas, consistent with the treatment of the Water Corporation.

And by December 2000, develop and introduce new enabling legislation to replace the Act. The replacement Act will:

- incorporate all recommendations outlined above;
- facilitate the adoption of a more commercial approach to service provision consistent with the principles of competitive neutrality;
- enable the provision of Community Service Obligation payments to Water Boards where applicable;
- ensure that the power to compulsorily acquire land be consistent with changes to similar powers under other water industry legislation;
- enable access to broader financial powers in relation to borrowing; and
- ensure that any restrictions to third party access arrangements or on the ability of the Boards to manage assets on behalf of other parties are excluded.

Public interest assessment:

These conclusions have been assessed in terms of their benefits and costs and follow logically from the analysis and evidence presented.

OUTCOME

The previous Government endorsed the recommendations of the review. Drafting instructions to include the recommended amendments in the proposed *Acts Amendment (Competition Policy) Bill 2001* have been forwarded to Parliamentary Counsel.

WATER CORPORATION ACT 1995

WATER CORPORATION (AUTHORISED CAPITAL) REGULATIONS 1987

Terms of Reference: As per clause 5(9) of the Competition Principles Agreement

Conducted by: Water Corporation

Consultation: An advertisement was placed in the *West Australian* newspaper calling for submissions and major interest groups were informed of the review and invited to make submissions.

Status: Endorsed by the previous Government
8 November 1999

SIGNIFICANT RESTRICTIONS

Restrictions:

- minimum standard requirements for staff management;
- accountability, reporting, public sector standards and code of conduct requirements;
- ability for intervention by the Minister;
- requirements for the payment of dividends;
- limits on the ability and avenues to borrow funds, and on financial instruments and transactions available; and
- the payment of debt guarantee fees.

Public interest assessment:

The report concluded that the adoption by the Western Australian Government of the corporatisation model for government business enterprises necessarily entails a number of constraints on the freedom of the Water Corporation, but that these are in the public interest.

The report also concludes that instead of paying rate equivalents to the State Government, the Water Corporation should pay rates directly to the relevant local government.

Treasury opposes the recommendation as being inconsistent both with the Government's policy on government-owned corporations and with the reciprocal taxation arrangements between the three tiers of government. This recommendation, taken in isolation from other elements of these arrangements, would provide a windfall gain to local government at the expense of the State Government.

Existing reciprocal taxation arrangements between the Commonwealth, State and local government tiers of government are currently undergoing review, based on any outcome being revenue neutral. Pending the completion of that review, the Water Corporation should remain subject to reciprocal arrangements whereby the revenues from the tax equivalent payments by local government businesses are retained by the local government and rate equivalent payments of State Government businesses are retained by the State Government.

Recommendation:

To retain the above restrictions on competition that result from the acceptance of the current approach to corporatisation.

OUTCOME

The previous Government endorsed the recommendations of the review. Drafting instructions to include the recommended amendments in the proposed *Acts Amendment (Competition Policy) Bill 2001* have been forwarded to Parliamentary Counsel.

WATER SERVICE COORDINATION ACT 1995

Terms of Reference:	As per clause 5(9) of the Competition Principles Agreement
Conducted by:	Office of Water Regulation
Consultation:	An advertisement was placed in the <i>West Australian</i> newspaper calling for submissions and major interest groups were informed of the review and invited to make submissions.
Status:	Endorsed by the previous Government 8 November 1999

SIGNIFICANT RESTRICTIONS

Restrictions:

- the requirement for an operating licence;
- the extension of the licensing structure to statutory providers;
- the exemptions of the Water Corporation and Water Boards from certain licence terms and conditions; and
- duration of licences being determined by the Coordinator up to a maximum of 25 years to provide the industry with the time necessary to obtain a rate of return on long-lived assets.

Public interest assessment:

The effects of the restrictions on competition were adequately considered with a rigorous and transparent assessment carried out on the costs and benefits. Where appropriate, alternative means of achieving the objectives of the restrictions were given adequate consideration. The above restrictions on competition were found to be in the public interest.

The exemptions from certain licence terms and conditions were retained to avoid conflict and overlap with the provisions of the *Water Corporation Act 1995* and the *Water Boards Act 1904*.

Recommendation:

To retain the above restrictions on competition.

Restrictions:

The review identifies a number of restrictions on competition, all of which are related to licensing.

Recommendations:

To amend the legislation by:

- removing the restriction relating to controlled areas from the licensing system and relying on the operating licence;
- requiring the Coordinator of Water Services to apply a public interest test when considering either a licence exemption or substantial amendments to an existing licence;
- clarifying the information requirements applying to the Water Corporation and Water Boards;
- enabling the Coordinator to approve the transfer of a licence where the transfer is not detrimental to the public interest, so that as with new licence holders, only persons who possess the necessary technical and financial skills will be able to obtain such licences; and
- removing the Water Boards' exemption from certain enactments otherwise applying to licensees, subject to the repeal of the relevant Water Board Act provisions.

OUTCOME

The previous Government endorsed the recommendations of the review. Drafting instructions to include the recommended amendments in the proposed *Acts Amendment (Competition Policy) Bill 2001* have been forwarded to Parliamentary Counsel.

WATER SUPPLY, SEWERAGE AND DRAINAGE ACT 1912

Terms of Reference: As per clause 5(9) of the Competition Principles Agreement

Conducted by: Office of Water Regulation

Consultation: The opportunity to comment on this review was provided to the Water and Rivers Commission, the Water Corporation, Aqwest (Bunbury Water Board), the Busselton Water Board and the Western Australian Municipal Association.

Status: Endorsed by the previous Government June 1998

SIGNIFICANT RESTRICTIONS

Restrictions:

There were no provisions in the Act that restricted competition.

Recommendation:

The report concludes that the Water Supply, Sewerage and Drainage Act 1912 be retained in its current form.

OUTCOME

The previous Government endorsed the recommendations of the review.

WATERWAYS CONSERVATION ACT 1976 AND REGULATIONS

Terms of Reference: As per clause 5(9) of the Competition Principles Agreement

Conducted by: Water and Rivers Commission

Consultation: Consultation has taken place with the Office of Water Regulation, Leshenault Inlet Management Authority, Peel Inlet Management Authority, Avon River Management Authority, Albany Waterways Management Authority, Rivers and Estuaries Council and the West Australian Municipal Authority.

Status: Endorsed by the previous Government 20 December 1999

SIGNIFICANT RESTRICTIONS

Restriction:

The licensing system for disposal of waste in waterways.

Public interest assessment:

The legislative provisions giving rise to this restriction were assessed as being in the public interest for environmental reasons. The effects of the restriction on competition were adequately considered with a rigorous and transparent assessment carried out on the costs and benefits. Alternative means of achieving the objectives of the restrictions were given adequate consideration.

Recommendation:

To retain the licensing provisions for pollutant discharges in waterways.

OUTCOME

The previous Government endorsed the recommendations of the review.

WESTERN AUSTRALIAN MEAT INDUSTRY AUTHORITY ACT 1976 AND REGULATIONS

Terms of Reference: As per clause 5(9) of the Competition Principles Agreement

Conducted by: Minister for Primary Industry

Consultation: Parties consulted include the Meat Industry Authority, the Health Department and industry through Agriculture WA's Meat Industry Program and its partnership group.

Status: Endorsed by the previous Government
23 March 1999

SIGNIFICANT RESTRICTIONS

Restrictions:

- Restriction controlling abattoir capacity control measures
- Regulations on saleyards.

Public interest assessment:

The restrictions are anti-competitive and redundant.

Recommendation:

To repeal the above restrictions.

Restriction:

Provision for branding controls.

Public interest assessment:

This restriction is considered a necessary government function to maintain clear stock identification.

Recommendation:

The restriction should be retained on the grounds of public interest.

Restriction:

Provision for the regulation of abattoirs and processing works.

Public interest assessment:

This restriction is in the public interest because of health and safety concerns.

Recommendation:

This restriction should be retained.

OUTCOME

The previous Government endorsed the recommendations of the review.
Amendments are necessary.

WESTERN AUSTRALIAN PRODUCT SYMBOLS ACT 1972

Terms of Reference:	As per clause 5(9) of the Competition Principles Agreement
Conducted by:	Department of Commerce and Trade
Consultation:	Inter-Agency
Status:	Endorsed by the previous Government 14 August 2000

SIGNIFICANT RESTRICTIONS

Restriction:

The symbols are able to be used by eligible businesses free of charge and may present a slight advantage to Western Australian businesses and products in home markets.

Public interest assessment:

The review found that the symbols do not comprise a significant restriction in their own right, but as a result of their widespread success and recognition, they now noticeably influence consumer behaviour in Western Australia. Their use may therefore confer a competitive advantage on qualifying businesses and products, which could potentially lead to an ability to charge marginally higher prices or obtain a higher market share.

On the other hand, when viewed as a labelling mechanism, the symbols may do no more than provide consumers with the necessary information to purchase local products or support local business according to their inclination. To this end the review noted some important spin-off benefits from the symbols in growing the Western Australian economy and noted their popularity among consumers.

The review concluded that, on the balance of probabilities, the benefits of the current model outweigh its minor costs and that the Act should be retained in its present form. An alternative model, involving corporatisation of the symbols and levying annual fees for their use involved prohibitive additional administrative and compliance costs would reduce their accessibility to Western Australian products and businesses.

Recommendation:

That the Western Australian Product Symbols Act 1972 be retained in its present form.

OUTCOME

The previous Government endorsed the recommendations of the review.

ATTACHMENT 2:

Summary Legislation Reviews of Existing Legislation Under Way

Legislation	Stage of Review	Terms of reference	Conducted by	Consultation
Aerial Spraying Control Act 1966 and Regulations	Repeal pending - not reviewed	N/A	N/A	N/A
Agriculture and Veterinary Chemicals (Western Australia) Act 1995 and Regulations	National review completed. Federal Government coordinating response.	Clause 5(9) CPA	Inter-jurisdictional Committee	Broad consultation with all jurisdictions and interest groups
Albany Port Authority Act 1926 and Regulations	Repealed - not reviewed	N/A	N/A	N/A
Albany Woollen Mills Agreement Act 1976	Repealed - not reviewed	N/A	N/A	N/A
Architects Act 1921 and Regulations	Review held over pending National review	Clause 5(9) CPA	Contract and Management Services	Public advertisement, submissions from interested parties
Auction Sales Act 1973 and Regulations	Review under way	Clause 5(9) CPA	Ministry of Fair Trading	Discussion paper released, submissions invited
Australian Soccer Pools Bloc: Rules for Subscriber Participation	Repeal pending	N/A	N/A	N/A
Biological Control Act 1986	Removed from review table	N/A	N/A	N/A
Builders Registration Act 1939 and Regulations	Review under way	Clause 5(9) CPA	Ministry of Fair Trading	Discussion paper released
Building and Construction Industry Training Fund and Levy Collection Act 1990 and Regulations	Review under way	Clause 5(9) CPA	Department of Training	Intra and inter agency consultation
Bulk Handling Act 1967 and Regulations	Review under way	Clause 5(9) CPA	Agriculture WA	Intra and inter agency consultation

Legislation	Stage of Review	Terms of reference	Conducted by	Consultation
Bunbury Port Authority Act 1909 and Regulations	Repealed – not reviewed	N/A	N/A	N/A
Camballin Farms (AIL Holdings Pty Ltd) Agreement Act	Repeal pending	N/A	N/A	N/A
Caravan Parks and Camping Grounds Act 1995	Review under way	Clause 5(9) CPA	Department of Local Government	The Caravan Parks and Camping Grounds Advisory Committee, a committee comprising government and industry representatives is considering matters to do with restrictions in both the Act and associated regulations.
Cemeteries Act 1986	Review under way	Clause 5(9) CPA	Department of Local Government	A discussion paper was prepared and sent to sixty five key industry stakeholders as part of the Cemeteries Act Review. The stakeholders included cemetery boards, local governments, funeral directors, monument masons and historical societies.

Legislation	Stage of Review	Terms of reference	Conducted by	Consultation
Censorship Act 1996	Removed from review table	N/A	N/A	N/A
Censorship of Films Act 1947	Repealed and removed from review table	Clause 5(9) CPA	Department of Training	N/A
Charitable Collections Act 1946 and Regulations	Repeal pending	N/A	N/A	N/A
Chiropractors Act 1964 and Regulations	Review under way	Clause 5(9) CPA	Health Department	Public seminar and invitation to submit
City of Perth Parking Facilities Act 1956 and Regulations	Repealed - not reviewed	Clause 5(9) CPA	Department of Transport	N/A
Coal Industry Superannuation Act 1989 and Regulations	Review suspended awaiting Commonwealth legislation changes	N/A	Department of Minerals and Energy	N/A
Conservation and Land Management Act 1984 and Regulations	Review under way	Clause 5(9) CPA	Department of Conservation and Land Management	Public submissions invited
Consumer Credit (Western Australia) Act 1996	Review under way	Clause 5(9) CPA	Ministry of Fair Trading	KPMG issues paper circulated
Cooperative and Provident Societies Act 1903 and Regulations	Repeal pending	N/A	N/A	N/A
Country Slaughterhouse Regulations 1969	Review under way	Clause 5(9) CPA	Health Department	Public seminar and invitation to submit

Legislation	Stage of Review	Terms of reference	Conducted by	Consultation
Credit Act 1984 and Regulations	Review under way	Clause 5(9) CPA	Ministry of Fair Trading	Limited consultation was required as the legislation is largely superseded by the Consumer Credit Code. Very few provisions in the Credit Act 1984 and the Regulations remain.
Cremation Act 1929 and Regulations	Review under way	Clause 5(9) CPA	Health Department	Discussion paper released for public comment
Dampier Port Authority Act 1985 and Regulations	Repealed	N/A	N/A	N/A
Debt Collectors Licensing Act 1964 and Regulations	Review under way	Clause 5(9) CPA	Ministry of Fair Trading	Issues Paper released
Dental Act 1939 and Regulations	Review under way	Clause 5(9) CPA	Health Department	Public seminar and invitation to submit
Dental Amendment Act 1996	Review under way	Clause 5(9) CPA	Health Department	Public seminar and invitation to submit
Dental Prosthetists Act 1985 and Regulations	Review under way	Clause 5(9) CPA	Health Department	Public seminar and invitation to submit
Education Service Providers (Full Fee Overseas Students) Registration Act 1992	Review under way	Clause 5(9) CPA	Department of Education Services	Inter and Intra-Agency consultation

Legislation	Stage of Review	Terms of reference	Conducted by	Consultation
Employment Agents Act 1976 and Regulations	Review under way	Clause 5(9) CPA	Ministry of Fair Trading	A questionnaire was sent to 355 licensed employment agents. Public submissions called for on issues through and advertisement in the West Australian. Stakeholders were contacted in writing inviting their responses to the draft review.
Esperance Lands Agreement Act 1960	Repeal pending	N/A	N/A	N/A
Esperance Port Authority Act 1968 and Regulations	Repealed - not reviewed	N/A	N/A	N/A
Firearms Act 1973 and Regulations	Removed from review table	N/A	N/A	N/A
Fish Resources Management Act 1994	Review under way	Clause 5(9) CPA	Independent consultant for Fisheries WA	Public comment invited
Fisheries Adjustment Schemes Act 1987 and Regulations	Review under way	Clause 5(9) CPA	Independent consultant for Fisheries WA	Public comment invited
Fishing Industry Promotion Training and Management Levy Act	Review under way	Clause 5(9) CPA	Independent consultant for	Public comment invited

Legislation	Stage of Review	Terms of reference	Conducted by	Consultation
1994			Fisheries WA	
Fremantle Port Authority Act 1902 and Regulations	Repealed - not reviewed	N/A	N/A	N/A
Friendly Societies Act 1894 and Regulations	Repeal pending	N/A	N/A	N/A
Fruit Growing Industry Trust Fund Act 1941 and Regulations	Repealed - not reviewed	N/A	N/A	N/A
Government Employees Superannuation Act 1987	Repeal pending	N/A	N/A	N/A
Grain Marketing Act 1975 and Regulations (LR)	Review under way	Clause 5(9) CPA	Minister for Primary Industry	Public submissions called for in press 1999
Hairdressers Registration Act 1946 and Regulations	Review under way	Clause 5(9) CPA	Independent consultants	Consultative committee established including industry, Government and consumer representatives. Public submissions called for.
Health (Adoption of Food Standards Code) Regulations 1992	Review under way	Clause 5(9) CPA	Health Department	Invitation to submit (as part of development of model food legislation)
Health (Asbestos) Regulations 1992	Review under way	Clause 5(9) CPA	Health Department	Invitation to submit
Health (Cloth Materials) Regulations 1973	Review under way	Clause 5(9) CPA	Health Department	Invitation to submit (as part of replacement of Health Services Act)

Legislation	Stage of Review	Terms of reference	Conducted by	Consultation
Health (Construction Work) Regulations 1973	Review under way	Clause 5(9) CPA	Health Department	Public seminar and invitation to submit - expected to be replaced by new Building Act.
Health (Drugs and Allied Substances) Regulations 1961	Review under way	Clause 5(9) CPA	Health Department	Invitation to submit (as part of replacement of Health Services Act)
Health (Food Hygiene) Regulations 1993	Review under way	Clause 5(9) CPA	Health Department	Invitation to submit (as part of development of model food legislation)
Health (Game Meat) Regulations 1992	Review under way	Clause 5(9) CPA	Health Department	Invitation to submit. Will be repealed on commencement of the Health (Meat Hygiene) Regulations 2001.
Health (Liquid Waste) Regulations 1993	Repealed - not reviewed	N/A	N/A	N/A
Health (Meat Inspection and Branding) Regulations 1950	Review under way	Clause 5(9) CPA	Health Department	Invitation to submit. Will be repealed on commencement of the Health (Meat Hygiene) Regulations 2001.
Health (Pesticides) Regulations 1956	Review under way	Clause 5(9) CPA	Health Department	Invitation to submit

Legislation	Stage of Review	Terms of reference	Conducted by	Consultation
Health (Pet Meat) Regulations 1990	Review under way	Clause 5(9) CPA	Health Department	Invitation to submit (as part of replacement of Health Services Act)
Health (Public Buildings) Regulations 1992	Review under way	Clause 5(9) CPA	Health Department	Public seminar and invitation to submit - expected to be replaced by new Building Act.
Health (School Dental Therapists) Regulations 1974	Review under way	Clause 5(9) CPA	Health Department	Invitation to submit. Will be repealed on enactment of new Dental Act
Health (Swimming Pools) Regulations 1964	Review under way	Clause 5(9) CPA	Health Department	Invitation to submit (as part of replacement of Health Services Act)
Health Act 1911	Review under way	Clause 5(9) CPA	Health Department	Public seminar and invitation to submit
Health Amendment Act 1996	Review under way	Clause 5(9) CPA	Health Department	Invitation to submit (as part of replacement of Health Services Act)
Health Laboratory Services (Fees) Regulations	Review under way	Clause 5(9) CPA	Health Department	Invitation to submit (as part of replacement of Health Services Act)
Health Services (Conciliation and Review) Act 1995	Removed from review table because it did not contain	Clause 5(9) CPA	Health Department	N/A

Legislation	Stage of Review	Terms of reference	Conducted by	Consultation
	restricts on competition			
Home Building Contracts Act 1991 and Regulations	Review under way	Clause 5(9) CPA	Ministry of Fair Trading	Discussion paper
Hospitals (Licensing and Conduct of Private Hospitals) Regulations 1987	Review under way	Clause 5(9) CPA	Health Department	Invitation to submit (to be replaced by new legislation)
Hospitals (Licensing and Conduct of Private Psychiatric Hostels) Regulations 1997	Review under way	Clause 5(9) CPA	Health Department	Invitation to submit (to be replaced by new legislation)
Hospitals (Service Charges) Regulations 1984	Review under way	Clause 5(9) CPA	Health Department	Invitation to submit
Hospitals and Health Services Act 1927	Review under way	Clause 5(9) CPA	Health Department	Public seminar and invitation to submit
Hospitals and Health Services Amendment Act 1996	Review under way	Clause 5(9) CPA	Health Department	Invitation to submit (as part of replacement of Hospital and Health Services Act)
Indecent Publications and Articles Act 1902 and Regulations	Repealed – not reviewed	N/A	N/A	N/A
Industrial Training Act 1975 and Regulations	Removed from Review Table	N/A	N/A	N/A
Infectious Diseases (Inspection of Persons) Regulations	Review under way	Clause 5(9) CPA	Health Department	Invitation to submit (to be replaced by new infectious disease)

Legislation	Stage of Review	Terms of reference	Conducted by	Consultation
				legislation)
Inquiry Agents Licensing Act 1954 and Regulations	Repealed - not reviewed	N/A	N/A	N/A
Irrigation (Dunham Rivers) Agreement Act 1968	Repeal pending	N/A	N/A	N/A
Jetties Act 1926 and Regulations	Repeal pending	N/A	N/A	N/A
Land Administration Act 1997 and Regulations	Review under way	Clause 5(9) CPA	Department of Land Administration	Call for submissions August 2000
Land Valuers Licensing Act 1978 and Regulations	Review under way	Clause 5(9) CPA	Ministry of Fair Trading	A series of consultations were held with a reference group comprising industry, Land Valuers Licensing Board, Australian Property Institute and consumer representations.
Legal Contribution Trust Act 1967	Review under way	Clause 5(9) CPA	Ministry of Justice	Call for submissions June 2000
Legal Practice Board Rules 1949	Review under way	Clause 5(9) CPA	Ministry of Justice	Call for submissions June 2000
Legal Practitioners (Professional Indemnity Insurance) Regulations	Review under way	Clause 5(9) CPA	Ministry of Justice	Call for submissions June 2000

Legislation	Stage of Review	Terms of reference	Conducted by	Consultation
1995				
Legal Practitioners Act 1893 and Rules	Review under way	Clause 5(9) CPA	Ministry of Justice	Call for submissions June 2000
Legal Practitioners Disciplinary Tribunal Rules 1993	Review under way	Clause 5(9) CPA	Ministry of Justice	Call for submissions June 2000
Lights (Navigation Protection) Act 1930	Repeal pending	N/A	N/A	N/A
Liquor Licensing Act 1988 and Regulations	Review under way	Clause 5(9) CPA	Office of Racing, Gaming and Liquor	Public advertisement, invitations to make submissions
Local Government Draft Model By-Laws	Removed from review table	N/A	N/A	N/A
Main Roads Act 1930 and Regulations	Review under way	Clause 5(9) CPA	Main Roads WA	Inter-agency
Marine and Harbours Act 1981 and Regulations	Repeal pending	N/A	N/A	N/A
Marketing of Eggs Act 1945 and Regulations	Review under way	Clause 5(9) CPA	Agriculture Western Australia	Public advertisement invitations to make submissions
Marketing of Meat Act 1946 and Regulation	Repealed – not reviewed	N/A	N/A	N/A
Marketing of Potatoes Act 1946 and Regulations	Review under way	Clause 5(9) CPA	Agriculture Western Australia	Public advertisement invitations to make submissions
Meat Transport Regulations 1969	Review under way	Clause 5(9) CPA	Health Department	Public seminar and invitation to submit

Legislation	Stage of Review	Terms of reference	Conducted by	Consultation
Medical Act 1894 and Rules	Review under way	Clause 5(9) CPA	Health Department	Public seminar and invitation to submit
Medical Amendment Act 1996	Review under way	Clause 5(9) CPA	Health Department	Public seminar and invitation to submit
Mental Health (Administration) Regulations 1965	Repealed - not reviewed	N/A	N/A	N/A
Mental Health (Treatment Fees) Regulations 1992	Repealed - not reviewed	N/A	N/A	N/A
Mental Health Act 1962	Repealed - not reviewed	N/A	N/A	N/A
Metropolitan (Perth) Passenger Transport Trust Act 1957 and Regulations	Repeal pending	N/A	N/A	N/A
Metropolitan Region Town Planning Scheme Act 1959	Review under way	Clause 5(9) CPA	Ministry for Planning	Public advertisement, call for submissions October 1998
Morley Shopping Centre Redevelopment Agreement Act 1992	Review under way	Clause 5(9) CPA	Department of Commerce and Trade	Inter-agency
Mutual Recognition (Western Australia) Act 1995	Removed from review table - Approved by previous Government	N/A	N/A	N/A
Northern Developments (Ord River) Agreement Act 1960	Repeal pending	N/A	N/A	N/A
Northern Developments Pty Ltd	Repeal pending	N/A	N/A	N/A

Legislation	Stage of Review	Terms of reference	Conducted by	Consultation
Agreement Act 1957				
Northern Developments Pty Ltd Agreement Act 1969	Repeal pending	N/A	N/A	N/A
Nurses Act 1992	Review under way	Clause 5(9) CPA	Health Department	Public seminar and invitation to submit
Occupational Therapists Registration Act 1980 and Regulations	Review under way	Clause 5(9) CPA	Health Department	Public seminar and invitation to submit
Offensive Trades (Fees) Regulations 1976	Review under way	Clause 5(9) CPA	Health Department	N/A
Optical Dispensers Act 1966 and Regulations	Review under way	Clause 5(9) CPA	Health Department	Public seminar and invitation to submit
Optometrists Act 1940 and Regulations	Review under way	Clause 5(9) CPA	Health Department	Public seminar and invitation to submit
Path Centre Notice and Directions 1995	Review under way	Clause 5(9) CPA	Health Department	Public seminar and invitation to submit
Pearling Act 1990 and Regulations	Review under way	Clause 5(9) CPA	Centre for International Economics	CIE review released for public comment
Perth Market Act 1926 and Regulations	Review under way	Clause 5(9) CPA	Agriculture Western Australia	Public advertisement, call for submissions June 2000

Legislation	Stage of Review	Terms of reference	Conducted by	Consultation
Perth Theatre Trust Act 1979	Review under way	Clause 5(9) CPA	Perth Theatre Trust	Inter-agency
Petroleum (Submerged Lands) Act 1982 and Regulations	Review under way	Clause 5(9) CPA	National Review	Public forum in May 2000
Petroleum Act 1967	National review completed - WA response being considered	Clause 5(9) CPA	Department of Minerals and Energy	N/A
Petroleum Products Subsidy Act 1965 and Regulations	Removed from review table	N/A	N/A	N/A
Pharmacy Act 1964 and Regulations	National review - awaiting COAG response	N/A	N/A	N/A
Physiotherapists Act 1950 and Regulations	Review under way	Clause 5(9) CPA	Health Department	Public seminar and invitation to submit
Piggeries Regulations 1952	Review under way	Clause 5(9) CPA	Health Department	N/A
Podiatrists Registration Act 1984 and Regulations	Review under way	Clause 5(9) CPA	Health Department	Public seminar and invitation to submit
Poisons Act 1964 and Regulations	National review	N/A	N/A	N/A
Poisons Amendment Act 1996	National review	N/A	N/A	N/A
Port Hedland Port Authority Act 1970 and Regulations	Repealed - not reviewed	N/A	N/A	N/A
Ports (Model Pilotage) Regulations 1994	Repeal - Proclamation	N/A	N/A	N/A
Ports Functions Act 1993	Repeal - Proclamation	N/A	N/A	N/A
Poultry Processing Establishments Regulations 1973	Review under way	Clause 5(9) CPA	Health Department	N/A

Legislation	Stage of Review	Terms of reference	Conducted by	Consultation
Psychologists Registration Act 1976 and Regulations	Review under way	Clause 5(9) CPA	Health Department	Public seminar and invitation to submit
Queen Elizabeth 11 Medical Centre (Delegated Site) ByLaws 1986	Review required	Clause 5(9) CPA	Health Department of Western Australia	N/A
Queens Counsel Appointment Regulations 1900	Review under way	Clause 5(9) CPA	Ministry of Justice	Call for submissions June 2000
Radiation Safety Act 1975 and Regulations	National review - awaiting final report to COAG	N/A	N/A	N/A
Real Estate and Business Agents Act 1978 and Regulations	Review under way	Clause 5(9) CPA	Ministry of Fair Trading	A discussion paper was sent to industry participant, and peak industry group, including the Real Estate Institute of WA (REIWA) and the Consumer Association of WA.
Regional Development Commissions Act 1993	Review under way	Clause 5(9) CPA	Department of Commerce and Trade	Submissions to be sought from Commissions and local government

Legislation	Stage of Review	Terms of reference	Conducted by	Consultation
Retail Trading Hours Act 1987 and Regulations	Review under way	Clause 5(9) CPA	Ministry of Fair Trading	Consultation included a discussion paper inviting comment from individual retailers and retail associations. A public seminar was also conducted following a notice in the West Australian inviting members of the public to attend.
Retirement Villages Act 1992, Regulations and Code of Practice	Review under way	Clause 5(9) CPA	Ministry of Fair Trading	The Retirement Villages Reference Group produced a discussion paper and responses were obtained from retirement village residents and associations.
Rural Adjustment and Finance Corporation Act 1993	Repeal pending	N/A	N/A	N/A
Secret Harbour Management Trust Act 1984	Repeal pending	N/A	N/A	N/A
Security Agents Act 1976 and Regulations	Repeal pending	N/A	N/A	N/A

Legislation	Stage of Review	Terms of reference	Conducted by	Consultation
Seeds Act 1981 and Regulations	Repeal pending	N/A	N/A	N/A
Settlements Agents Act 1981 and Regulations	Review under way	Clause 5(9) CPA	Ministry of Fair Trading	A discussion paper was sent to industry participants and the Consumer Association of WA. Further consultations were conducted through a reference group comprising industry, Settlement Agents Board and consumer representatives.
Shipping and Pilotage Act 1967 and Regulations	Repeal pending	Clause 5(9) CPA	Department of Transport	N/A
Small Business Guarantees Act 1984 and Regulations	Repeal pending	N/A	N/A	N/A
State Employment and Skills Development Authority Act 1990 and Regulations	Repealed - not reviewed	N/A	N/A	N/A
Stipendiary Magistrates Act 1957	Repeal pending	N/A	N/A	N/A
Street Collections Regulation Act 1940 and Regulations	Repeal pending	N/A	N/A	N/A
The Law Society Public Purposes Trust Act 1985	Review under way	Clause 5(9) CPA	Ministry of Justice	Call for submissions June 2000

Legislation	Stage of Review	Terms of reference	Conducted by	Consultation
Tobacco Control Act 1990 and Regulations	Review under way	Clause 5(9) CPA	Health Department	N/A
Town Planning and Development Act 1928	Review under way	Clause 5(9) CPA	Ministry for Planning	Public advertisement, call for submissions October 1998
Travel Agents Act 1985 and Regulations	Review under way	Clause 5(9) CPA	Ministry of Fair Trading	National consultations were conducted with peak industry groups in each State. A discussion paper was released in each State and notice of the paper was published in the West Australian and made available on the Web. Two rounds of consultations were conducted in each State.
Treatment of Sewerage and Disposal of Effluent and Liquid Waste Regulations	Review under way	Clause 5(9) CPA	Health Department	Public seminar and invitation to submit
University Medical School Teaching Hospitals Act 1955	Review under way	Clause 5(9) CPA	Health Department	N/A
Veterinary Preparations and Animal Feeding Stuffs Act 1976	National review		National review	Consultation with all jurisdictions and key stakeholders

Legislation	Stage of Review	Terms of reference	Conducted by	Consultation
Veterinary Surgeons Act 1960	Review under way	Clause 5(9) CPA	Agriculture Western Australia	Public advertisement for submissions
Video Tape Classification and Control Act 1987	Repeal - Proclamation	N/A	N/A	N/A
WA Marine (Hire and Drive Vessels) Regulations 1983	Repeal pending	N/A	N/A	N/A
WA Marine Act 1982	Repeal pending	N/A	N/A	N/A
Weights and Measures Act 1915 and Regulations	Review under way	Clause 5(9) CPA	Ministry of Fair Trading	Discussions papers were circulated to industry participants.
Western Australian Planning Commission Act 1985	Review under way	Clause 5(9) CPA	Ministry for Planning	Public advertisement, call for submissions October 1998
Wheat Marketing Act 1989	National review	Clause 5(9) CPA	Agriculture Western Australia	N/A
Wildlife Conservation Act 1950	Repeal pending	Clause 5(9) CPA	N/A	N/A
Workers' Compensation and Rehabilitation Act 1983	Review under way	Clause 5(9) CPA	WorkCover	Public advertisement and call for submissions was made 20 December 2000.

ATTACHMENT 3:

Reviews of New Legislation

Review item	Conducted by	Comments	Status	Legislative Status
Acts Amendment (Public Trustee and Trustee Companies) Bill 2000	Ministry of Justice	Reviewed together with Public Trustee Act 1941. The Public Trustees relief from certain liabilities and guarantees from the Consolidated Fund were found to be in the public interest.	Approved by the previous Government 18 December 2000	Legislative Assembly Second Reading
Amend Legal Practitioners Act 1893 to allow incorporation	Ministry of Justice	This is not a full review of the Legal Practitioners Act 1893, but of a proposal to amend the Act allowing incorporation of legal practices. The review recommended the removal of stamp duty exemptions, however the examination of practitioners' liability was deferred until the examination of the Act.	Approved by the previous Government November 1999	Bill not introduced.
Animal Welfare Bill	Department of Local Government	Found that restrictions were in the public interest to prevent unnecessary harm to animals and thus ensure only appropriately qualified individuals and organisations conduct animal research.	Approved by the previous Government January 2000	Legislative Council Second reading

Review item	Conducted by	Comments	Status	Legislative Status
Energy Coordination Amendment Bill 1997	Office of Energy	The restrictions identified and have all be classed minor with the exception of the requirement not to operate without a licence. The review concluded that the restrictions on competition are generally minimal and that the public benefits arising from the restrictions outweighed the costs.	Approved by the previous Government December 1998	Assented to 24 June 1999.
Environmental Protection (Diesel and Petrol) Regulations 1999	Department of Environmental Protection	Minor restrictions on the composition of fuels (for example sulfur levels) were found to affect all industries equally. Furthermore the maintenance of these restrictions is in the public interest - for health and environmental reasons.	Approved by the previous Government 14 August 2000.	N/A
Gas Corporation (Business Disposal) Act 1999	Office of Energy	Implemented a number of recommendations from the review of the Gas Corporation Act and Energy Operators (Powers) Act.	Approved by the previous Government June 1999	Assented to 24 December 1999
Industry and Technology Development Bill 1997	Department of Commerce and Trade	Review concluded no significant restrictions.	Approved by the previous Government 31 December 1997.	Assented to 20 May 1998

Review item	Conducted by	Comments	Status	Legislative Status
Legal Aid Commission Amendment Bill 2000	Ministry of Justice	Restrictions concerning the qualifications of assessors, composition of the Commission and power of the Law Society were all considered to have minor impacts on competition and were in the public interest.	Approved by the previous Government 18 December 2000	Bill not introduced
Local Government (Functions and General) Amendment Regulations 1999	Department of Local Government	Restrictions included exemption of local government from tender requirements enabling them to enter into contracts with ex-employees, and also enabling them to give a purchasing (price) preference to regional supplier. Both restrictions on competition were assessed as being in the public interest.	Approved by the previous Government January 2000.	N/A
Magistrates Court Bill 1998	Ministry of Justice	The previously endorsed recommendation to introduce a competency requirement for appointment of magistrates under the Magistrates Court Bill 1998 (now 2000) should be rescinded.	Approved by the previous Government 14 August 2000.	Bill not introduced.
Model Scheme Text	Ministry for Planning	Model Scheme Text proposed as Appendix B of the Town Planning Regulations 1967.	Approved by the previous Government Jan 2000.	N/A

Review item	Conducted by	Comments	Status	Legislative Status
Perth Parking Management Bill 1998	Department of Transport	New Bill removes discriminatory treatment of Council and private parking providers, licenses and limits parking places in Perth Central Business District. Public benefits are reduced Central Business District congestion and improved air quality.	Approved by the previous Government 18 May 1998	Assented to on 19 May 1999
Port Authorities Bill 1997	Department of Transport	Restrictions included exemption from planning and building requirements; public sector management provisions; accountability provisions; ministerial approval; consultation and borrowing limit provisions; pilotage provisions; Licensing provisions. These were found to be in the public interest. However, an exclusive licensing clause inserted in the Bill.	Approved by the previous Government May 1998	Assented to 13 April 1999
Proposal re civil judgment enforcement systems	Ministry of Justice	Proposal for legislation for a single system with some restrictions endorsed as being in public interest. As legislation has not been drafted, the review was more of a strategic nature identifying possible restrictions to competition arising in the proposal for a single system of civil judgement enforcement. The review identified seven restrictions on competition and made a number of recommendations to ensure the system would comply with National Competition Policy (NCP) principles.	Approved by the previous Government November 1999	N/A

Review item	Conducted by	Comments	Status	Legislative Status
Prostitution Control Bill 1998	Police Service of Western Australia	The major restrictions in this Bill include; registration of industry workers, managers, premises and drivers along with restrictions upon brothel location and means by which advertising may be conducted.	Approved by the previous Government March 1999	Bill not introduced
Rights in Water and Irrigation Amendment Bill 1999	Water and Rivers Commission	The major restriction in this legislation is that of licensing and the licensing process. The legislative provisions giving rise to the majority of restrictions were assessed as being in the public interest and therefore recommended for retention.	Approved by the previous Government 18 December 2000.	Assented to 10 January 2001
Rural Housing Bill 1997	Rural Housing Authority	<p>Changed name to Country Housing Bill 1997.</p> <p>Differential treatment of the Authority compared with similar private sector institutions (Sections 5,11,16,17), and</p> <p>Differential treatment of customers based on location, occupation or type of business (Sections 18-26).</p> <p>The restrictions appear to be adequately identified. They have been classified as minor and in the public interest.</p>	Approved by the previous Government September 1997.	Assented to 14 April 1998

Review item	Conducted by	Comments	Status	Legislative Status
<p align="center">Town Planning and Development (Subdivision) Regulations 1999</p>	<p>Ministry for Planning</p>	<p>The restrictions identified included: The form in which applications for subdivision or dealing will be made and the supporting information; the matters to be considered by the Commission in determining applications; the options available to the Commission in approving, conditionally approving or refusing applications; and the need for the Commission to endorse approvals and the specifications of penalties for any failure to provide correct information. All restrictions were found to be minor and in the public interest.</p>	<p>Approved by the previous Government 14 August 2000</p>	<p>N/A</p>
<p align="center">Urban and Regional Planning Bill 2000</p>	<p>Ministry for Planning</p>	<p>Review has been completed and will be presented to Government upon reconsideration of planning legislation.</p> <p>Restrictions concerning planning policy, zoning, planning control areas, subdivision control, development approval and ministerial approval of matters of State significance were all found to be in the public interest. The major restriction was found to be the inability to appeal a refusal of rezoning. However, it was found that ministerial overriding powers provided an alternative to direct appeal.</p>	<p>Not yet considered</p>	<p>Bill not introduced.</p>

Review item	Conducted by	Comments	Status	Legislative Status
<p>Water Services Coordination Amendment Bill 1998 Regulations</p>	<p>Office of Water Regulation</p>	<p>Now titled Water Services Coordination Amendment Act 1999. Two restrictions on competition were identified in the legislation review: preventing unlicensed plumbers from carrying out plumbing work; and the imposition of licence conditions on plumbers by the Board. Both were found to be in the public interest.</p>	<p>Approved by the previous Government June 2000</p>	<p>Assented 19 June 2000.</p>

ATTACHMENT 4:

Summary of Reforms of Professional and Occupational Services

Artificial Breeding Operator

The legislation review of the *Artificial Breeding of Stock Act 1965* recommended the repeal of all restrictions on artificial breeders. A voluntary registration scheme is proposed to replace the existing licensing requirements which will reduce the barriers to entry into the artificial breeding market, potentially reducing costs to growers. Other restrictions on the specification of premises to be used for artificial breeding are to be removed along with unnecessary restrictions on the importation of genetic material.

Auctioneer

The legislation review of the *Auction Sales Act 1973* has been completed and is yet to be considered by Government.

Boxing

The previous Government approved a review of the *Boxing Control Act 1987 and Regulations*. The requirement for registration was found to be in the public interest and retained. The review dealt with registration requirements for boxing agents, judges, managers, promoters, seconds and timekeepers. They were found to be in the public interest.

Debt Collector

The review of the Debt Collectors is incomplete. An issues paper on the legislation review of the *Debt Collectors Licensing Act 1964* has been distributed to members of the public and the review is being drafted.

Driving Instructor

The review of the *Motor Vehicle Drivers Instructors Act 1963* will be scheduled for review prior to June 2002.

Employment Agent

The legislation review of the *Employment Agents Act 1976* has been completed and has been forwarded to the Minister for Fair Trading to take to Cabinet.

Firearms Repairer

The *Firearms Act 1973 and Regulations* have not been reviewed. Substantial amendments to the legislation have already been implemented following the 1996 Resolutions of the Australasian Police Ministers' Council, which required introduction of national uniform gun laws in response to national public concerns over firearms safety issues.

The legislation is predicated on there being a clear public interest in laws restricting possession of and dealing in firearms, which has been demonstrated by very strong and widespread community support for such legislation.

Hairdressers

The legislation review process of the *Hairdressers Registration Act 1946* is still under way.

Industrial Agents

The legislation review process of the *Industrial Relations Act 1979 (WA)*, which includes restrictions on who can act as an agent within the Industrial Relation Commission, is still under way.

Inquiry Agent

A legislation review of the *Securities and Related Activities Control Act 1996* has been completed and endorsed by the previous Government. This Act consolidated and repealed the *Inquiry Agents Licensing Act 1954* and the *Security Agents Act 1976*.

Land Valuer

The draft legislation review of the *Land Valuers Licensing Act 1978* is being examined in light of the Gunning Inquiry, before being submitted to Cabinet. One of the key recommendations of the Gunning Inquiry is to scrap seven licensing boards and the Building Disputes Committee in favour of one single authority to license finance brokers, builders, car dealers, land valuers, and real estate and settlement agents.

Marine Stores Collectors And Dealers

The previous Government approved a legislation review of the *Pawnbrokers and Second-hand Dealers Act 1994*. There is no longer a licensing requirement for marine collectors and dealers.

Marine Pilots

The Maritime Bill which will repeal a number of Acts governing marine pilots was reviewed by an independent consultant and is currently being considered by Government.

Motor Vehicle Salesman
Motor Vehicle Yard Manager

The review of the *Motor Vehicle Dealers Act 1973* has been completed and endorsed by the previous Government on 22 March 1999. The review recommended that the licensing of salespersons, yard managers and car market operators be repealed. The *Motor Vehicle Dealers Amendment Bill 2000* implements changes arising from this NCP review of the Act and the general fair trading review by the Motor Vehicle Sales Industry Reference Group. The Ministry of Fair Trading has undertaken to provide an NCP review of the Bill.

Municipal Clerk

A review of the *Local Government Act 1995* has been completed and endorsed by the previous Government. The licensing requirement for municipal clerks has been removed.

Pawnbroker

A legislation review of the *Pawnbrokers and Second-hand Dealers Act 1994* and the *Pawnbrokers and Second-hand Dealers Regulations 1996* has been completed and endorsed by the previous Government. The review recommended that the present licensing provisions of the Act and Regulations be retained.

However, a further review of the Act will be conducted after the current legislation has been in operation for an additional three year period, by which time the impact of the legislation should be more assessable and alternative approaches, including those likely to be introduced in other States, have been examined.

Porter

As a result of the legislation review of the *Government Railways Act 1904* the licensing restriction on porters was repealed.

Real Estate/Business Sales Representative

A review of the *Real Estate and Business Agents Act 1978* is currently under way.

Semen Collector

As for artificial breeders listed above.

Swimming Pool Manager

A review of the *Health (Swimming Pools) Regulations 1964* is under way as part of the broad review of the *Health Act 1911* and subsidiary legislation.

Tow Truck Driver/Operator

The *Tow Truck Regulations 1975* have not been reviewed. The legislation does not control entry into the tow truck industry but simply specifies minimum required standards.

Veterinary Surgeons

The review process of the *Veterinary Surgeons Act 1960* is still under way.

ATTACHMENT 5:

Water

Pricing and Cost Recovery

Consumption-Based Pricing

Water Supply Services

In 2000/01, the Water Corporation commenced a program of tariff reform that will reduce the service charge for vacant residential and commercial land to the equivalent of the residential fixed service charge over a two year period. Previously, service charges for vacant commercial and residential land were based on gross rental value (GRV).

The implementation of this program over two years compares with the four year phase-in period anticipated at the time of Western Australia's second tranche report.

Other than for vacant non-metropolitan commercial land, standard residential and commercial consumption tariffs also apply for vacant land. Non-metropolitan vacant commercial land is subject to a flat consumption tariff of 106.4 cents per kilolitre.

The Water Corporation has financially ring-fenced its metropolitan bulk water operations, establishing an internal volumetric bulk water transfer price that recovers full operating costs, including a real rate of return on the written down replacement cost of assets. The rate of return is the same as that which applies to the Corporation's other assets, being 4% on assets acquired or constructed prior to 1 January 1996, and 6% on other assets that are not funded through developers contributions.

For 2000/01, the metropolitan bulk water transfer price has been set at 41.855 cents per kilolitre.

The Corporation continues its long-standing practice of charging major country customers the cost of providing water to their particular location. This practice grew out of charging major mining projects the actual cost of water supply augmentation in the 1960's and 70's.

In 1999/2000, Aqwest completed installing water meters as part of the first phase towards the implementation of two-part tariffs for non-residential customers. Aqwest has modelled a range of alternative two-part tariff structures to replace existing GRV based charges. Although Aqwest's preferred models are based on implementing changes on a revenue neutral basis, preliminary analysis suggests that significant tariff rebalancing between

non-residential customers will be required to support the implementation of two-part tariffs.

For example, under most alternative models aggregate revenue from commercial customers is likely to fall by around 25%, while that from non-rateable properties, such as hospitals, schools and local government, would increase by around 70%. Aqwest expects soon to be able to seek endorsement for a preferred two-part tariff structure, although it is anticipated that once finalised, a phase-in period of several years will be required.

The BWB is continuing its program of installing water meters for non-residential consumers. Progress has been slower than anticipated due in part to the difficulty of obtaining adequate access to premises in the central business district where only 20% of properties have meters fitted. In contrast, all properties in the light industrial area have had meters fitted. In addition, the high rate of growth in the Busselton region, and associated need for water infrastructure, has placed pressure on the Board's resources.

Sewerage and Drainage Services

As part of a program to implement a single fixed charge for residential sewerage services, which will replace existing charges based on GRV, the Water Corporation is increasing the minimum charge by 10% per annum. This increase is in addition to any approved general price rise. In 2000/01, the minimum residential sewerage charge was \$214.60 in the metropolitan area and \$186.70 in the country.

As a result of these tariff reforms, minimum sewerage charges have risen by 52% since the commencement of the program in 1997/98. The Corporation estimates that around 11,200 (or 2.5%) of households paid the minimum charge in 2000/01, which is forecast to rise to 19,770 (or 4.4%) in 2001/02. Despite these significant annual increases, the Corporation expects that the program will take until 2006/07 to complete.

In its second tranche assessment, the National Competition Council (NCC) noted that the introduction of a standard charge based on the cost of service provision was sufficient to meet the State's reform commitments. Western Australia believes that given the scope of pricing reforms being implemented, the program represents an appropriate balance between achieving the underlying objectives of the Council of Australian Governments' (COAG) water reforms while providing an acceptable adjustment path for the community.

As with sewerage, minimum drainage charges have been increased by more than the approved general price increase, to facilitate the introduction of a single fixed charge for residential drainage services supplied by the Water Corporation. In 2000/01, the minimum residential drainage charge was \$47.40 in metropolitan areas. The minimum charge now applies to 80% of residential customers consuming drainage services.

Irrigation

The Water Corporation supplies bulk water to the South West and Preston Valley Irrigation Cooperatives, which own their respective distribution assets. The bulk water tariffs paid by irrigators in these schemes are based on recovering the lower bound of the COAG pricing guidelines. That is, tariffs recover operating and maintenance costs, interest cost on debt, State taxes and Commonwealth tax equivalents, and make provision for future asset refurbishment/replacement through a renewals annuity.

In 2000/01 the volumetric bulk water tariff for the South West Irrigation Cooperative is \$1.53/ML and for Preston Valley, \$30.72/ML up to 1200ML and \$51.21/ML over 1200ML.

The Water Corporation presently still owns the irrigation assets that form part of the Carnarvon and Ord River Irrigation Schemes. As noted in the State's second tranche report, the Carnarvon scheme is a more complex arrangement than the other irrigation schemes. Water is drawn from borefields to provide a reticulated supply to farmers, many of whom have their own bores drawing from the same aquifer. The reticulated supply acts as a supplementary supply for some farmers and is the sole supply for others who do not have direct access to the aquifer.

The Corporation has established processes to assess the appropriate framework under which distribution assets in both the Carnarvon and Ord Irrigation Schemes could be transferred to local ownership. This would result in the Corporation charging a volumetric bulk water tariff and would facilitate the implementation of two-part tariffs by the irrigation entities. This matter is progressing and is discussed in more detail under the section dealing with devolvement of irrigation scheme management.

Full Cost Recovery

Water supply tariffs of the three water service providers in Western Australia are based on achieving full cost recovery in accordance with the COAG pricing guidelines.

Where approved tariffs for regulated water businesses do not recover the full cost of service provision, including a rate of return on assets, the shortfall is

directly funded as a Community Service Obligation (CSO) from consolidated revenue (refer to discussion under CSO section below).

In its second tranche assessment, the NCC found that the Water Corporation, Aqwest and the BWB had all substantially achieved full cost recovery, although reference was made to the application of debt guarantee fees to Aqwest and the BWB.

Detailed information on asset valuation methodologies and provision for asset consumption, taxes and tax equivalent regimes, CSO payments and rates of return can be found in the agencies' annual reports and were discussed in the NCC's second tranche assessment report.

Information provided to Treasury by the City of Kalgoorlie-Boulder indicates that it generated revenue of \$3.4 million in relation to its sewerage scheme, the majority of which was raised through rates. After accounting for total operating costs of \$2.3 million, the City generated a pre-tax rate of return on the depreciated historical cost of sewerage scheme assets of just over 4.2%.

Irrigation Services

As part of the transfer of irrigation distribution assets from the Water Corporation to the South West Irrigation cooperative, the Government provided a transitional subsidy. This was phased out in 1999 /2000, to enable the effective tariff paid by irrigators to gradually reach the lower bound of the COAG pricing guidelines. The operating subsidy was paid directly to the irrigators' cooperative.

Cross-Subsidies

The Water Corporation has implemented tariff reforms aimed at:

- reducing the level of cross-subsidisation between business and residential customers; and
- ensuring that tariffs better reflect the cost of service provision.

Tariff restructuring has resulted in water service costs for business customers falling by \$62m, or around 48%, from 1992/93 to 1999/00. Overall, 60% of business customers have experienced decreases. The reduction in charges for business was largely funded by the elimination of the 150kL free water allowance for metropolitan residential customers, and equivalent increases for country customers.

The Corporation expects to complete its program of rebalancing commercial and residential charges in 2001/02, with a further reduction in aggregate

commercial tariffs of around \$14 million. This will be subject to sufficient revenue being available from a general price increase to fund the completion of the restructuring program.

The Corporation has also implemented programs to:

- financially ring fence its metropolitan bulk water operations (effective 1 July 2000);
- implement a single fixed charge for vacant commercial and residential land (phased in over 2 years from 1 July 2000); and
- implement a single fixed charge for residential sewerage services (phased in over 10 to 11 years from 1 July 1997).

As noted previously, an element of cross subsidisation between non-residential customers of Aqwest and the BWD remains, although this is being addressed.

Community Service Obligations

Policy

Detailed information on CSO policy in Western Australia, and general reporting of CSOs, is provided in Chapter 2, Competitive Neutrality.

Water Corporation

CSOs performed by the Water Corporation include:

- the provision of pensioner and senior concessions:
 - rates rebate for pensioners (\$21.1 million) – home owners in possession of a Pensioner Concession Card (PCC) or a State Concession Card (SCC) receive a rebate of up to 50% of the Water Corporation's annual charges for water, sewerage and drainage services. The average value of the rebate per home-owner is approximately \$211 per year;
 - consumption concession for pensioners (\$4.4 million) – holders of a PCC or a SCC receive a rebate of up to 50% of the Water Corporation's water consumption charges on the property that they occupy (provided they are responsible for paying the account). The average value of the rebate per recipient is approximately \$35 per year;
 - rates rebate for seniors (\$2.6 million) – home-owners in possession of a State Seniors card (SSC) receive a rebate of up to 25% of the Water

Corporation's annual charges for water, sewerage and drainage services. The average value of the concession is \$109 per year;

- other (\$0.1 million) – other water concessions provided by the Water Corporation include a 25% concession on annual water, sewerage and drainage services for residents of retirement villages.
- the supply of water, sewerage and drainage services at uniform tariffs, where those tariffs may not be sufficient to recover the full cost, including a rate of return on capital, of providing these services (\$151 million):
 - the Government has a commitment to facilitating regional development, and consequently requires that tariffs for country water services be set at levels similar to those charged in the metropolitan area. This policy, combined with the high cost of providing services over large geographic areas with a relatively low availability of water sources, has contributed to the Government subsidising rural water services; and
 - the Government has capped the maximum residential sewerage charge in country areas at \$550. This ensures that country residents do not face a disproportionate financial burden for what is effectively the same service as provided in metropolitan areas. The resulting reduction in revenue (estimated at \$1.1 million) is recognised as a CSO and is directly funded from consolidated revenue.
- the provision of infill sewerage, where uniform tariffs are insufficient to recover the full cost, including a rate of return on capital, of providing this service (\$15 million):
 - the infill sewerage program is providing deep sewer in areas that previously relied on septic tanks, which were associated with negative environmental impacts;
 - tariffs in country areas, which have received sewerage services for the first time as part of the program, are set to recover the full cost of service provision, although the maximum rate per dollar GRV is 12 cents. This compares with 5.94 cents, decreasing to 2.76 cents, in metropolitan areas. Given the community-wide benefits from the removal of septic tanks, the Government has determined that any remaining revenue shortfall in these schemes should be funded through a CSO; and
 - the Government's view was that the community as a whole benefits from their removal and consequently the costs should be incurred as a CSO rather than being paid directly by residents.

Aqwest and BWB

Aqwest provides rebates to pensioners and seniors as follows:

- registered pensioners receive a 50% rebate of the total amount of water rates payable and 50% rebate of the amount payable for water consumption up to 350 kilolitres; and
- registered seniors receive a 25% rebate of the total amount of water rates payable and 50% rebate of the amount payable for water consumption up to 150 kilolitres.

The BWB also provides a rebate to both owners and tenants of properties who hold a current Pensioner and Senior Card. The rebate is applicable to standard supply charges and water consumption costs and is assessed as follows:

- pensioners receive a 50% rebate of the total amount of water rates payable and 50% rebate of the amount payable for water consumption up to 350 kilolitres; and
- registered seniors receive a 25% rebate of the total amount of water rates payable.

Aqwest and the BWB recently completed competitive neutrality reviews as required under National Competition Policy (NCP). One of the outcomes of these reviews was that the Government endorsed that concessions, the levels of concessions and associated funding arrangements should be agreed between each agency and the Minister for Water Resources, subject to Cabinet approval.

Subject to the implementation of the full raft of competitive neutrality review recommendations (see discussion under 'Commercial Focus' below), it is anticipated that these concessions would then be recognised as CSOs and be directly funded by Government from consolidated revenue.

Reporting

Section 52(j) to (l) of the *Water Corporation Act* requires the Corporation's Statement of Corporate Intent (SCI), which is a public document, to include information on:

- the nature and extent of CSOs that are to be performed;
- the costings of, funding for, or other arrangements to make adjustments relating to, CSOs; and

- the ways in which, and the extent to which, compensation will be made for performing CSOs.

With the implementation of competitive neutrality, it is anticipated that similar reporting obligations would be imposed on Aqwest and the BWB.

New Rural Schemes

Western Australia is committed to establishing a comprehensive framework through which the economic viability and ecological sustainability of future investments in new rural water supply schemes, or extensions to existing rural water schemes, will be assessed. Such a framework is currently developed, and is expected to be considered by Cabinet by 30 June 2001.

It is anticipated that the formal framework would draw on existing legislation through which ecological sustainability is assessed, but would integrate this in assessing the economic viability of investments in new rural water supply schemes, or extensions to existing rural water schemes.

Proposed Framework

Treasury has proposed that a two-stage process apply in establishing whether the proposed investment is expected to be economically viable:

1. Estimate whether the project is expected to generate sufficient revenue, based on existing tariffs to meet the project's direct costs. If not, also ascertain the tariffs level at which the project would become financially viable.

Direct costs include operating and maintenance costs, taxes or tax equivalents, provision for asset consumption and an appropriate rate of return on capital invested. Forecast revenue should not include government subsidies or CSOs.

2. Identify whether the project will result in other benefits or costs to the community and if so, articulate the nature of the benefits and costs and the likely magnitude of each.

Broader community impacts considered may include, but should not be limited to:

- efficient resource allocation;
- social welfare, income distribution and equity;

- regional development;
- consumer interests; and
- environmental impacts.

It is expected that a range of government agencies and other interested parties will be consulted where relevant in relation to the non-financial socio-economic impacts of the investment (eg Department of Environmental Protection, Department of Resource Development, Department of Commerce and Trade).

In assessing the financial and economic costs and benefits, the methodology outlined in Chapters Four, Five and Six of Treasury's *Project Evaluation Guidelines* (May 2000) will be applied. Where possible, a conclusion will be drawn as to whether the sum of direct and broader benefits flowing from the project now and in the future is greater than the stream of direct and broader costs.

The assessment may indicate that the investment is expected to generate overall economic benefits, despite revenue being insufficient to meet the project's direct costs. In such cases, the government may consider providing a subsidy, or other means of support, to the project proponent to ensure the project is commercially viable if Cabinet decided that the project should proceed.

Institutional Reform

Commercial Focus

As noted under the section dealing with CSOs, Aqwest and the BWB have both completed competitive neutrality reviews as required under National Competition Policy. In addition, potential competitive restrictions in the *Water Boards Act 1904* have also been reviewed.

One of the recommendations of both reviews was that Aqwest and the BWB should be permitted to expand the scope of operations into other markets that are complementary to their core activities, as well as into other geographical areas, and make profits from these new activities. The Cabinet Government Management Standing Committee (GMC) endorsed the recommendations of both the competitive neutrality and legislation reviews subject to:

- there being a requirement to annually prepare SCIs and strategic development plans (SDPs);

- there being an explicit requirement to earn a rate of return on assets, with the actual rate to be negotiated annually through SCIs and SDPs;
- concessions to be provided, the levels of such concessions and the funding arrangements for these concessions be agreed between each agency and the Minister for Water Resources, subject to Cabinet approval;
- explicit provision for the payment of dividends to the Consolidated Fund, with dividend payments to be negotiated annually through SCIs and SDPs; and
- removal of exemption from local government rates and charges to be by way of rate equivalent payments to the Consolidated Fund.

The implementation of these recommendations is consistent with the adoption of a sharper commercial focus by Aqwest and the BWB. Instructions to draft the required amendments to the *Water Boards Act 1904* were forwarded to the Parliamentary Counsel's Office in August 2000. The amendments are to be consolidated into the *Acts Amendment (Competition Policy) Bill No. 2 2000*, which is likely to be introduced into the first session of Parliament in 2001.

Irrigation Scheme Management

Western Australia has substantially met its obligation to give constituents a greater degree of responsibility in the management of irrigation areas.

Preston Valley

On 1 July 1998, the Water Corporation formally handed over the distribution assets of the Preston Valley Irrigation Scheme to a farmer co-operative. The Corporation continues to provide the bulk water supply from the Glen Mervyn Dam.

Carnarvon Irrigation Scheme

In December 1999, the Board of the Water Corporation approved a proposal to divest the ownership and operation of the Carnarvon Irrigation Scheme to local growers. The Board's decision was endorsed by the Minister for Water Resources in February 2000, and was supported by a public meeting of Carnarvon growers in May 2000.

In June 2000, the Corporation and the Carnarvon Irrigation Local Management Group signed a Memorandum of Understanding, which set out the means by which the irrigation scheme would be transferred to local

management and control. Subject to Cabinet approval, it is anticipated that the divestment be completed by 30 June 2001.

The divestment will involve the transfer of the piped irrigation distribution system from the Corporation to a grower-owned irrigation entity. The proposed irrigation entity will be responsible for:

- retail water service delivery to irrigators within its designated district in accordance with an Operating Licence issued by the Office of Water Regulation;
- operation, maintenance and renewal of the distribution assets, service connections and a pump station; and
- water resource management within its designated area including meter reading and measuring water quality in accordance with a Water Allocation Licence issued by the Water and Rivers Commission.

The Corporation will be responsible for:

- the supply of bulk water to the irrigation entity under a Bulk Water Supply Agreement;
- operation, maintenance and renewal of the Carnarvon borefield and storage assets; and
- water resource management within its designated area in accordance with a Water Allocation Licence issued by the Water and Rivers Commission.

It is proposed that the legal structure of the irrigation entity be a mutual cooperative consisting of linked asset and management cooperatives. The asset cooperative will own the irrigation distribution system assets and will have responsibility for refurbishing the asset base, managing and safeguarding renewals contributions and protecting the assets in event of a failure of the management cooperative. The management cooperative will run the retail irrigation business, including operating and maintaining the distribution system assets, which will be leased from the asset cooperative.

The tariff structure proposed for the irrigation entity will be a two-part tariff comprising:

- an access charge relating to the size of allocation, which is based on the recovery of the fixed costs of the business; and
- a volumetric (or usage) charge designed to recover all the short run variable costs of supplying Scheme water.

The bulk water price the entity will pay the Corporation will be based on a similar tariff structure, ensuring that fixed costs are recovered.

The divestment is underpinned by three legal agreements: a Business Transfer Agreement; a Bulk Water Agreement; and an Asset Transfer Agreement. In addition, both parties will need to agree to a Business Plan and an Asset Management Plan being prepared for the entity. These documents are seen as critical to the future viability of the entity.

Ord River Irrigation Scheme

The Water Corporation commenced proceedings to devolve ownership and management of the Ord Irrigation Scheme to the grower-owned Ord Irrigation Co-operative (OIC) in 1995. As part of the devolution, OIC commenced an operations and maintenance contract for the irrigation system assets in February 1996. Negotiations were suspended in 1997 to allow issues related to native title and the environment to be resolved.

The Corporation recommenced negotiations with OIC in October 1999. A Memorandum of Understanding signed between OIC and the Corporation in July 2000 formalised the intent of the parties and provided the backbone for the work required for the project.

In December 2000, the OIC and the Corporation signed an Asset Management Agreement, which gives the OIC the right to manage, utilise and operate the assets up to the point where they are transferred. It is planned that the transfer be completed by 30 June 2001. The key elements of the divestment are similar to those described above for Carnarvon.

Provision for the Environment

The following information demonstrates that Western Australia has made substantial progress implementing its agreed programs.

- *considered environmental contingency allocations, including the planning process (allocation, management, operation, implementation and use), monitoring and review mechanisms (maximum timeframe allowed before review and identification of triggers prior to this time elapsing) after initial determinations -*

The *Rights in Water and Irrigation Act 1914 (as amended in 2001)* provides for three different classifications of management planning, namely regional, subregional and local area management plans. The 2nd Tranche assessment referred to these as 'Allocation Plans'. As water allocation mechanisms form only a part of water management, these plans will now be referred to as

'Management Plans', consistent with the RIWI Act. The provision of water for the environment is considered at each of the three allocation planning levels. In addition, the Environmental Protection Authority will have a role in assessing the adequacy of Ecological Water Requirements (EWR) and Environmental Water Provisions (EWP) in water management plans.

The issuing of water licences under the RIWI Act, is constrained by the determination of the EWPs. Licensed allocations must be kept with the sustainable limits set for the resource. Allocations for the environment are considered at several levels, depending on the level of knowledge and experience of a particular resource. In regional scale management plans, or in areas where there is little technical knowledge available, and the water resource is determined to be not stressed, initial estimates of EWRs and EWPs may be broadly defined as a 'notional or interim allocation limit' for the purpose of providing initial estimates of abstraction limits, or a percentage of the rainfall in certain groundwater areas. In areas that are highly or fully developed (ie allocations greater than 70% of sustainable yield) the allocations for water dependent ecosystems are based on detailed scientific investigations which determine the Ecological Water Requirements (EWR).

These investigations are normally carried out by experts (consultants) in the field under contract to the WRC. The work is supervised by WRC staff with a sound knowledge of the EWR process and methodologies. In areas of high conservation values, it may be determined that all water should be allocated to ecological values, such as is proposed for the Shannon River.

The transition from providing notional or interim allocations to EWR status will be driven in many cases by growth pressures, whether potential or real. EWRs are then converted to Environmental Water Provisions (EWPs) to take into account the socio-economic pressures associated with allocation planning. In these areas, the allocations for consumptive uses follow the allocation to the environment. Principles for determining EWPs are contained in the T2 Assessment report pages 552 and 553 and set out the Commission's recently released 'Environmental Water Provisions Policy for Western Australia' (see section 2.4).

The RIWI Act provides for a statutory planning process which requires specific identification of environmental values and how the rights to water should be allocated including the needs of the environment. Water management plans require Ministerial approval before implementation and are also subject to the provisions of the *Environment Protection Act 1986*. The establishment of local water resource committees will include, where practical, people with knowledge and experience in the conservation of ecosystems. Included in the statutory framework is the requirement for broad public and stakeholder consultation in plan development and implementation. The Act also allows the Commission to put conditions on

licences or to amend licences to protect the environment and environmental values.

The RIWI Act Part III, Division 3C, section 26GW, 26GX and 26GY refer to the purposes of regional, sub-regional and local area management plans. It is a requirement in the Act that management plans at each level of planning must specify the monitoring and reporting which is to occur at least once in every 7 years as information becomes available from monitoring and further research. Where EWR/EWP are nominal, monitoring of groundwater level and quality behaviour as the system becomes stressed will indicate the adequacy of the nominal figures.

Generally, where management plans have been implemented, any changes to allocations will be carried out at the time of Plan review, which will vary between every 5 to 7 years. It is unlikely that for groundwater systems for example, changes to allocations will be made during the tenure of the Plan. This is deliberate to give licensees some continuity and security in their allocations for that period of time, and to respect the longer time frames of change associated with groundwater resources. There is a provision in the Act however, to amend allocations in the shorter timeframe if necessary based on certain triggers, but with proper management, this contingency is unlikely to be required. Whilst the timeframes of change for surface water are significantly shorter, the same principle applies. Proper monitoring will identify any detrimental trends which may be developing during the exploitation of a water resource and these will trigger a response at the time of Plan review.

- *established a sustainable balance between the environment and other uses, including formal water provisions for surface water and groundwater consistent with ARMCANZ/ANZECC National Principles -*

The Commission has recently released its 'Environmental Water Provisions Policy for WA' (copy enclosed). This policy describes the principles and processes to be applied by the Commission in determining how much water should be retained (allocated) for the environment when allocating and reviewing water use rights. It also identifies important linkages to WA's statutory framework, and to national principles. In particular, the Policy conforms with the:

- National Principles for the Provision of Water for Ecosystems' (1996)
- the core objectives of the National Strategy for Ecologically Sustainable Development which provides for environmental protection whilst allowing for sustainable development

The *Rights in Water and Irrigation Act 1914 (as amended in 2001)*, specifically provides for water for the environment, including "to provide for management of water resources, and in particular: (1) for their sustainable use

and development to meet the needs of current and future users; and (2) for the protection of their ecosystems and the environment in which water resources are situated, including by the regulation of activities detrimental to them" (s4(1)).

- *determined and specified property rights, including the review of dormant rights*

The *Rights in Water and Irrigation Act 1914 (as amended 2001)*, is an Act relating to rights in water resources, to make provisions for the regulation, management, use and protection of water resources, to provide for irrigation schemes, and for related purposes. This Act clearly specifies rights to water in sections 9 (riparian right), 10 (stock and domestic rights), 20, 21, 22, and 25A but may restrict the amount of water, the rate at which it is taken, and the purpose for which it is taken if the quantity of the water resource is, or likely to be, insufficient to meet any demand made by the needs of the environment.

- *instituted a statewide process in setting environmental allocations, and when issuing new entitlements, have provided for environmental allocations -*

The *Rights in Water and Irrigation Act 1914 (as amended 2001)*, Part III, Division 3C, section 26GW, 26GX and 26GY refer to the purposes of regional, sub-regional and local area management plans. It is a requirement in the Act that management plans at each level of planning across the State, set out how rights in respect to water are to be allocated, and water may be taken and used, to meet various needs, including the needs of the environment, identification of environmental values and the protection of those values.

The National Land and Water Resources (NL&WR) Audit, undertaken in 2000 resulted in an assessment of WA's water resources culminating in the public release of the report - "Western Australia Water Assessment 2000 - Water Availability and Use" (copy enclosed). This audit has taken a significant step beyond previous State and National reviews by creating preliminary assessments of environmentally sustainable yields at regional scales across the State. The adopted methodology of estimating sustainable yields is consistent with the allocation process being implemented in WA, including the expectation that some resources will be withheld from development and others will be developed with soundly established environmental water provisions.

Estimates produced in this way have introduced very substantial environmental water allocations which create conservative or precautionary estimates of sustainable yield - the SY being the amount of water that can be substantially harvested each year from a water resource after making provision for environmental (Ecological Water Requirements - EWR) and

social values (Environmental Water Provisions – EWP). As a result of these audit assumptions, sustainable yields for surface water are generally significantly less than the divertible yields (as established in the 1985 Audit) except in areas where subsequent hydrological investigations has substantially increased the estimated magnitude of the resource.

After estimating sustainable yields, individual resource units of groundwater and surface water were classified into response categories appropriate to different levels of utilisation categories (detailed in T2 Assessment pages 549 and 550).

- *progressed the implementation of the endorsed allocation programs as published in the NCC's second tranche assessment*

The Commission is progressing steadily with the EWP & allocation planning 'rollout' program as published in the NCC's second tranche assessment.

However the Commission is currently revising this 'rollout plan' in light of the results of the recently completed comprehensive review of the status of the State's surface and groundwater systems for the NL&WR Audit. 'WA Water Assessment 2000' identifies the high priority systems requiring review or determination of EWPs and sustainable limits.

Report Against The ARMCANZ/ANZECC Principles

Principle 1- River regulation and/or consumptive use should be recognised as potentially impacting on ecological values

This principle is clearly accepted by the Commission. It is recognised in the State EWP Policy and was taken into account in 'WA Water Assessment 2000'.

Principle 2 - Provision of water for ecosystems should be on the basis of the best scientific information available on the water regimes necessary to sustain the ecological values of water dependent ecosystems

In areas where there is little technical knowledge available, and the water resource is determined to be not stressed (under allocated), a 'notional or interim allocation limit' may be set which relates to a percentage of the 'engineeringly practical diversion limit' for surface water, or a percentage of the rainfall in certain groundwater areas. In areas that are highly or fully developed (ie allocations greater than 70% of sustainable yield) the allocations for water dependent ecosystems are based on detailed scientific investigations which determine the Ecological Water Requirements (EWR). These investigations are normally carried out by experts (consultants) in the field under contract to the WRC. The work is supervised by WRC staff with a sound knowledge of the EWR process and methodologies(see Principle 6).

The Commission has pioneered the development of methodologies for the determination of EWRs and EWP for groundwater dependant ecosystems in Australia. The results of a decade of coordinated research into the wetlands of the Swan Coastal Plain was used in the determination of EWRs for the wetlands of the Gnangara and Jandakot mounds in the Perth region. The knowledge and approaches gained here are being applied elsewhere in the determination of EWPs for other high priority groundwater systems.

WA has also fostered a number of applied research projects to keep abreast of best practice methodologies for determination of EWRs for surface water systems.

Examples of the use of 'best scientific information' in EWP decision making can be found in the following allocation planning reports:

- Gnangara Mound Groundwater Resources ERMP (Nov 1986)
- Review of Proposed Changes to Environmental Conditions, Gnangara Mound Groundwater Resources (June 1995).
- East Gnangara EWP Plan (Oct 1997)
- Draft Harvey Basin Surface Water Allocation Plan (1998)

Detailed EWR work is currently underway on a number of surface and groundwater systems, notably the Ord surface water, La Grange groundwater, Harris and Collie surface water systems. The necessary information is obtained from a combination of in-house expertise and engagement of expert consultants

Provision of water for the environment requires specialist qualification, skills and experience. In recognition of this, the Commission has set up a panel of experts in many fields (including the environment) from which it can draw the appropriate experts to undertake the appropriate investigations in partnership with the Commission and the community. The Commission's past activity has been critical to nationally and internationally recognised practitioners in this field based in WA.

This type of investigation is used to set constraints on water available for consumptive uses. Once the Ecological Water Requirements (EWR) have been quantified (generally as a minimum flow, water level or water quality constraint that can be readily measured), the socio-economic impacts of maintaining such EWRs are considered. This will define the Environmental Water Provisions (EWP) which take the environmental, social and economic impacts into consideration. The EWPs are set in management plans as the allocation limit or sustainable yield and licensed allocations can then be approved up to this level. The setting of EWPs involves stakeholders and the community and by its nature, determines the trade-offs between the environment and the socio-economic requirements.

In addition, for environmentally significant proposals, the allocation of water is also subject to formal review under the *Environmental Protection Act 1986*.

Examples of the use of scientific information on EWRs in the allocation planning process are evident in the published reports and current studies mentioned above.

Principle 3 – Environmental water provisions should be legally recognised

The *Rights in Water and Irrigation Act 1914 (as amended)* enables the Commission's allocation plans to be statutory. These statutory plans are binding on the Commission in allocating water and must be taken into account by other decision-making authorities.

Part III, Division 3C, sections 26GW, 26GX and 26GY of the amended Act refer to the purposes of regional, sub-regional and local area management plans. It is a requirement in the Act that management plans at each level of planning across the State, set out how rights in respect to water are to be allocated, and water may be taken and used, to meet various needs, including the needs of the environment, identification of environmental values and the protection of those values.

The RIWI Act specifically provides for water for the environment, including "to provide for management of water resources, and in particular: (1) for their sustainable use and development to meet the needs of current and future users; and (2) for the protection of their ecosystems and the environment in which water resources are situated, including by the regulation of activities detrimental to them" (s4(1)).

Under the Commission's EWP Policy, environmentally significant allocation planning proposals are referred to the EPA for assessment under the Environmental Protection Act. The process of formal review under the Environmental Protection Act 1986, results in external and public review of management plan proposals and the setting of legally binding environmental criteria.

The RIWI Act also provides for the proclamation of any watercourse, wetland and groundwater area for the purpose of management which includes implementation of management plans, licensing, resource protection requirements and other more specific directives regarding the access and use of water. In unproclaimed areas, policy initiatives endorsed by the Minister and the Commission can be used to ensure the protection of ecological values in addition to community education initiatives.

Principle 4 - In systems where there are existing users, provision of water for ecosystems should go as far as possible to meet the water regime necessary to sustain the ecological values of aquatic ecosystems whilst recognising the existing rights of other water users

The purpose of developing water management plans is to set out particular matters that will guide the management of the State's water resources, including how rights in respect to water are to be allocated to meet various needs (including the needs of the environment), the management of the regulatory licensing system, the Commission's assessment of the capacity of water resources to provide water at sustainable levels of use, and the environmental impact of developing those resources.

In proclaimed areas, licensing is the regulatory tool that is used by the WRC to sustainably manage the water resources in those areas. The licences are conditionally approved, and contain amongst others, a condition which specifies annual consumption volumes and rates of abstraction. Penalties can be incurred if the rights are exceeded. In proclaimed groundwater areas, licences to abstract groundwater are required for all groundwater works including bores, wells, excavations, etc. The right to access and use surface water and groundwater is contained in Part III, RIWI Act.

In areas that are not proclaimed, existing unlicensed users are protected by restrictions on how much water may be taken from streams and powers of the Commission to issue directions limiting use.

In developing groundwater areas, the scientific determination of the water balance has guided decisions on allocation limits whilst providing water for the environment. Sustainable groundwater abstraction limits are set based on recharge estimates and updated as the response of the aquifers to abstraction is monitored. Groundwater level regimes are set in particular cases to ensure protection of wetlands and riparian vegetation which act as constraints on the sustainable abstraction limits. Where approved allocation has not reached the allocation limit, the limits can be amended during the course of the management plan amending the unallocated volume. Where approved allocation has reached the allocation limit, any amendment to the licensed allocation may impact on usage, hence caution is required in such amendments.

In all proclaimed groundwater areas of the State, allocation limits for consumptive use have been set. Explicit in this allocation limit is that the allocation to the environment has been set prior to the allocation for consumptive use. The allocation limit is the 'sustainable yield' which can be nominal, interim, preliminary and other descriptions which indicate that this figure is not static and will change with better data. The allocation limit is set so that licences can be issued against this limit.

Principle 5 – Where environmental water requirements cannot be met due to existing uses, action (including reallocation) should be taken to meet environmental needs

Preliminary EWRs have been determined for all 44 surface water basins and 174 groundwater management units in the State, through the recently completed 'WA Water Assessment 2000' work. The Audit represents a substantial allocation of water to the environment.

All existing EWRs are in place and enforced through allocation plans and licensing. New EWRs being determined will be enforced through incorporation in allocation plans and keeping licensed allocations to within sustainable limits.

The Audit indicated that only 2 of the 174 groundwater management units (GMUs) in the State were overallocated (ie allocations exceeded the sustainable limit). Strategies are in place to bring use back to sustainable limits for these 2 GMUs within the next 5 years. Some GMUs have sub-areas with localised overallocation, compensated for by adjacent sub-areas with lower allocations. Work is underway to resolve these by resurveying use, reallocation, or review/redistribution of sustainable limits.

The Audit indicated that none of the 44 surface water basins in the State or 303 subcatchment areas are overallocated.

The Audit found that most of the State's surface and groundwater resources are being appropriately managed, with less than 10% (by sustainable yield) requiring additional work to bring them up to the appropriate level of management. A key part of this backlog of work involves determining EWRs and reviewing sustainable limits.

Substantial work is carried out to ensure compliance with EWRs. Licensed allocations are kept within the sustainable limits determined by EWR criteria. Monitoring of the resource is carried out monthly to ensure water levels are in compliance with the EWR criteria. Water users are required to reduce extraction rates if breaches of criteria occur or appear likely to occur. This is enforced through the licensing process.

Water levels on the Gnamptara and Jandakot mounds are generally low due to a prolonged period of below average rainfall. About 25% of public supply production bores on the Gnamptara mound and 31% of production bores on the Jandakot mound have been shut down, under instruction from the Commission, to prevent breaches of EWR criteria.

The Commission will use its recently completed NL&WR Audit report to determine the priority areas for EWP and allocation planning work. The COAG 'rollout plan' is currently being revised in light of these results. This will set a 5 year work program to address these priorities.

Principle 6 - Further allocation of water for any use should only be on the basis that natural ecological processes and biodiversity are sustained (ecological values are sustained)

The Commission's EWP Policy for Western Australia sets out the process it will use for identification of ecological values supported by the water system and determination of the ecosystem processes which support these values and are sensitive to changes in the water regime.

The Commission engages expert consultants to carry out this work and has sufficient expertise in house to oversee the work. An accredited training course is being developed in conjunction with local universities and experts to widen the pool of staff and consultants trained in the methods for determination of EWRs.

Evidence that EWRs have been incorporated into allocation decisions can be found in the following allocation planning reports:

- Gngangara Mound Groundwater Resources ERMP (Nov 1986)
- Review of Proposed Changes to Environmental Conditions, Gngangara Mound Groundwater Resources (June 1995).
- East Gngangara EWP Plan (Oct 1997)
- Draft Harvey Basin Surface Water Allocation Plan (1998)

Each of these major allocation planning proposals was formally reviewed and approved by the EPA.

The Commission is committed to incorporating EWRs in allocation decision making through its EWP Policy and new Act.

Most of the State's surface and groundwater systems are being managed at a level appropriate to their degree of utilisation. However about 30% of the systems or 8% of the resources (by sustainable volume) require more detailed work on EWPs and allocation planning to bring them into line with full accordance with the ARMCANZ/ANZEC principles.

Principle 7 - Accountabilities in all respects of management of environmental water provisions should be transparent and clearly defined

The Commission has considerable expertise in community involvement in water resource management and supplements this by the use of expert

consultants as required. This is evident from a number of recent and current water allocation studies that are tackling difficult 'trade off' issues:

- Harvey Basin surface water allocation plan
- La Grange groundwater allocation planning
- Ord surface water allocation planning
- Harris River water allocation
- Collie River EWPs

The 2000 Audit (see Principle 6) allocation and use categories established for water resources in the State are used to trigger a water allocation process (plan). Generally, all current category C3 (greater than 70% utilisation) and C4 (over allocated) areas will require a management plan to be developed over the next 5 years.

Community participation in the decision making process of allocation is a statutory requirement in the new Act. The Commission's EWP policy sets out the process for involvement. Stakeholders are involved at the 'issues scoping' stage for the allocation plan preparation to agree on the key issues, work program to address these issues, and the community participation arrangements. They are then kept informed at regular intervals with progress and findings and provide feedback at critical stages in the development of the plan. Most large plans would go through a formal public review stage as part of the environmental impact assessment process.

All reports prepared by the WRC or consultants as part of development of the plan are publicly available. Copies are provided to key stakeholders and made available in the Commission's information centre for any interested parties.

Public notification that a proposed plan has been prepared must be published in the Gazette and daily newspapers circulating throughout the State. In addition, the public are invited to make submissions and the plans may be referred to any other body. Notice of plan implementation must be published in the Gazette.

The Commission's primary role is to sustainably manage the State's water resources and it does not have a vested interest in the outcomes of the decision process. Whilst many of the desired outcomes will be negotiable with the stakeholders and the community, other outcomes will not be negotiable, such as the need to manage water resources in a sustainable manner and to ensure environmental protection. In addition, the Commission's role as resource manager should not be one of total independence, but a role that influences change in behaviour and attitudes towards a sustainable future.

A good measure of how well the Commission is fulfilling its role in the EWP and allocation planning process is the formal review of its plans by the EPA. All of the major allocation plans over the last decade have been approved by the EPA with no significant departure from the EWPs proposed.

Principle 8 - Environmental water provisions should be responsive to monitoring and improvements in understanding of environmental water requirements

The monitoring and review process forms a major component of management plans. In groundwater areas, monitoring bore networks provide the continuous monitoring of water levels and water quality in each aquifer system to determine the impact of pumping and leakage characteristics which potentially may impact on any dependent ecosystems.

In areas such as the Gngangara and Jandakot mounds where formal EWPs have been set, the Commission carries out comprehensive compliance monitoring and review. This involves:

- monthly monitoring of criteria bores to ensure compliance with EWP criteria;
- periodic vegetation monitoring to ensure ecological objectives are being met;
- annual and triennial reporting of results to the EPA;
- periodic review of EWP criteria; and
- proactive intervention to prevent potential breaches of criteria by shutting down production bores if required.

The Commission spends in excess of \$200,000 per year on this compliance monitoring and review program for Gngangara and Jandakot alone.

A comprehensive review of the 1986 EWPs for the Gngangara mound was initiated in 1992. The process included a full public participation program with key stakeholders included as members of a Community Consultative Committee. The 'Review of Proposed Changes to Environmental Conditions' report was submitted to the EPA for formal assessment in 1995 and made available for public review. The revised EWPs were subsequently approved by the EPA and set as binding Ministerial Conditions.

The process for review of EWPs based on the results of compliance monitoring is set out in the Commission's EWP policy.

The Commission has the ability through its licensing powers to reduce extraction of water if required to ensure ecological values are protected. This has been demonstrated in recent years on the Gngangara and Jandakot mounds

where about 25% of the public supply production bores have been shut down to prevent breaches of EWP criteria. The same licensing powers would be used to reduce extraction if required due to a revision of EWPs.

Principle 9 - All water uses should be managed in a manner which recognises ecological values

The process to make provision for water dependant ecological values and determine the sustainable limit on water available for consumptive use is clearly set out in the Commission's EWP Policy.

Part III of the RIWI Act contains provisions that allows the Commission to regulate the quantity and rate of water that can be taken where there is a need to protect the ecological values, or for any other reason. In particular, the objects of Part III is to provide for the sustainable use and development of water resources, and for the protection of their dependent ecosystems by regulating the activities detrimental to them. This includes water offsite water quality impacts of the use of the water as well as the direct impacts of extraction.

Water management plans are developed within the provisions of the Act including mechanisms to ensure compliance, including licensing and penalties for non-compliance. Large users are required to provide a satisfactory operating strategy which sets out their extraction regime, drought strategy, water efficiency measures, monitoring program etc.

Principle 10 - Appropriate demand management and water pricing strategies should be used to assist in sustaining ecological values of water resources

All water users are required by the Commission to be efficient in their use of water. This is enforced through a review of actual water needs before issuing a licence to abstract water. For small water users, this based on efficient use 'crop factors'. For large public supply service providers, it is based on per capita consumption values (see 'Allocating Water for Perth's Future', 1997). Large users are also required to demonstrate their water use efficiency measures in the operating strategy submitted with their licence application and subsequently enforced as a licence condition.

Urban/industrial public supply service providers in WA such as the Water Corporation are fully self funding. Irrigation schemes have been or are in the process of being privatised a irrigation cooperatives with strategies in place to make them self funding.

One of the objectives of the recently completed water law reform process in WA was to provide the ability for water trading. With the new act in place this will be pursued in key locations. One of these is the Harvey Basin where underutilised irrigation supply capacity is being encouraged to be traded to

assist in meeting Perth's public supply needs. This would reduce pressure for the development of new supply sources for Perth.

Principle 11 - Strategic and applied research to improve understanding of environmental water requirements is essential

The Commission has pioneered the development of methodologies for the determination of EWRs and EWPs for groundwater dependant ecosystems in Australia. The results of a decade of coordinated research into the wetlands of the Swan Coastal Plain was used in the determination of EWRs for the wetlands of the Gnangara and Jandakot mounds in the Perth region. The knowledge and approaches gained here are being applied elsewhere in the determination of EWPs for other high priority groundwater systems.

WA has also fostered a number of applied research projects to keep abreast of best practice methodologies for determination of EWRs for surface water systems.

The Commission is initiating work on methodologies for determining interim EWRs for surface water and groundwater systems. This is in response to the large backlog of work required to determine detailed EWPs and sustainable limits over the next 5 years.

One of the most pressing strategic issues of water for the environment in WA at present is the effect of dry sequence climate variability on groundwater EWPs. A major study is about to be initiated to address this and related issues of groundwater supply reliability.

The Commission has also sponsored research into groundwater dependant fauna in the Pilbara.

Principle 12 - All relevant environmental, social and economic stakeholders will be involved in water allocation planning and decision-making on environmental water provisions

This is an integral part of the Commission's allocation planning process, as set out in sections 2.4 and 3.3 of the EWP Policy for WA.

ATTACHMENT 6:

**Progress on National
Road Transport Reforms**

Second Tranche Assessment Framework

Reform Project	Legislation/action required	Current implementation status and change since last report to the NCC
<p>National Heavy Vehicle Registration Scheme National Reform Project 2</p>	<p>To be introduced via amendments to the <i>Road Traffic Act 1974</i> and Regulations.</p>	<p>An amendment Bill was introduced into the Parliament during the Autumn 2000 session but was not passed when Parliament was prorogued prior to the 2001 election.</p>
<p>National Driver Licensing Scheme National Reform Project 3</p>	<p>Part 1 Introduction of the National Drivers' Licence Classifications and compulsory photographic licences is to be achieved via passage of a Bill to amend the <i>Road Traffic Act 1974</i>.</p> <p>Part 2 The remainder of the Scheme to be introduced via additional amendments to the <i>Road Traffic Act 1974</i> and Regulations.</p>	<p>Part 1 An amending Act was assented in 2000. Its provisions and supporting regulations will commence operations on 7 May 2001.</p> <p>Part 2 An amendment Bill has been drafted and subject to government approval will be introduced into Parliament in 2001.</p>

Reform Project	Legislation/action required	Current implementation status and change since last report to the NCC
<p>Vehicle Operations National Reform Project 4</p> <p>Heavy Vehicle Standards National Reform Project 5</p>	<p>Introduction of the following national models:</p> <ul style="list-style-type: none"> • Australian Vehicle Standards Rules; • Mass and Loading; • Oversize and Overmass Vehicles; and • Restricted Access Vehicles; <p>is to be achieved via the adoption of new Regulations.</p>	<p>Amendment to the regulation-making powers contained in the <i>Road Traffic Act 1974</i> is required before the regulations can be made. In the interim, amendment regulations that do not rely on the expanded regulation making powers contained in the amendment are well advanced.</p>
<p>One Driver / One Licence National Reform Project 9</p>	<p>To be introduced via amendments to the <i>Road Traffic Act 1974</i> and Regulations.</p>	<p>As for "National Driver Licensing Scheme, National Reform Project 3".</p>

Reform Project	Legislation/action required	Current implementation status and change since last report to the NCC
<p>Enhanced Safe Carriage and Restraint of Loads National Reform Project 13</p>	<p>Regulations to adopt the national model were disallowed by the West Australian Parliament in 1998. The amending regulations will be reintroduced when amendments to the regulation-making powers contained in the <i>Road Traffic Act 1974</i> are in place.</p>	<p>As for "Vehicle Operations, National Reform Project 4" and "Heavy Vehicle Standards, National Reform Project 5".</p>
<p>Interstate Conversion of Drivers Licences National Reform Project 15</p>	<p>Linked with the National Driver Licensing Scheme. Introduction will require minor amendment to Regulations made under the <i>Road Traffic Act 1974</i>.</p>	<p>The enabling Regulations commenced operation on 18 September 2000.</p>

Draft Third Tranche Assessment Framework

Reform Project	Implementation target	Comments
Combined Vehicle Standards	June 2001	Drafting of the regulations is well advanced. The regulations will adopt the majority of the agreed standards.
Australian Road Rules	Already implemented in WA	
Combined Bus and Truck Driving Hours	Not required	ATC Ministers have agreed this reform will not be applied in WA.
Consistent On-Road Enforcement for Roadworthiness	Already implemented in WA	
Second Charges Determination	Already implemented in WA	
Axle Mass Increases for Ultra-low Floor Buses	Already implemented in WA	