Government of Western Australia

FINAL 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 NCP reforms by Western Australia. The Western Australian Government is in the final stages of implementing NCP reforms where review has established that they are in the public interest.

Reviews are based on rigorous public interest tests, which take into account a wide range of economic, social and environmental considerations crucial to the successful implementation of NCP.

Since Western Australia's assessment in 2003, reforms have been implemented in the following areas:

- the Economic Regulation Authority (ERA) began operations on 1 January 2004 to independently regulate access for the existing gas and rail access regimes and to administer industrial licences for the water and gas industries;

- the ERA has been issued with a pricing reference to inquire and report on water and wastewater prices. The inquiry invites the ERA to recommend on the appropriate structure and level of urban water and wastewater prices levied by the Water Corporation and Bunbury and Busselton Water Boards respectively;

- the Taxi Amendment Bill 2003, which was assented to on 15 December 2003, provides for government to issue taxi licences for lease in addition to sale by tender. The Government has subsequently released for lease an additional 48 taxi plates and a formula is currently being developed to govern the release of additional plates;

- grain marketing reforms have been embedded with the establishment of the Grain Licensing Authority which has introduced competition to the prescribed bulk grains market through granting special export licences for prescribed bulk grains;

- the Legal Practice Bill 2003, which was assented to on 4 December 2003, allows legal firms to form multi-disciplinary partnerships and provides a greater role for non-lawyers;

- the *Acts Amendment and Repeal (Competition Policy) Act 2003*, which was proclaimed on 20 April 2004, removes six Acts from the suspension pool;

- gas full retail contestability is on target for introduction on 1 May 2004; and

- the *Electricity Industry Act 2004*, which has completed passage through Parliament and is awaiting proclamation, makes provisions for establishing a wholesale market for the South West Interconnected System (SWIS), establishing an independent licensing regime for electricity industry participants, establishing an Electricity Access Code to provide for third party access to electricity networks in Western Australia, and implementing measures to protect customers in a competitive electricity market.

This report is written in part as a response to the correspondence between the NCC and Western Australia, regarding the NCC's detailed framework for Western Australia's 2004 assessment (which is provided in Attachment 1).

2 LEGISLATION REVIEW

Western Australia is committed to reviewing its legislation and implementing reform where such reform is in the public interest. It has continued to make progress in reviewing and, where appropriate, reforming legislation that restricts competition and has now completed the bulk of the review program.

Some significant outstanding matters have been given a high priority by the Western Australian Government so that it can achieve the fulfilment of its NCP obligations in time for Western Australia's assessment by 30 June 2004. These include issues raised by the NCC such as completion of the core practices review of health practices, the passage of amendments to water legislation, and the determination of an optimal transition path to deregulation of the egg industry.

All reviews have been undertaken in accordance with the CPA, Western Australia's Clause 5 Legislation Review Table and the State's *Public Interest Guidelines for Legislation Review*.

Many reviews completed to date have recommended removing those restrictions on competition that are not in the public interest. Of equal importance, 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

Progress with individual legislation reviews is described in the updated publication, *Western Australia's Legislation Review Compendium* (Attachment 5).

Of Western Australia's 274 pieces of existing legislation (excluding electricity, gas and water) for review, the outstanding work includes:

- three legislation reviews (of the *Industrial Training Act 1975* and *Pharmacy Act 1964* and the planning legislation), which have not yet been considered by government, but will be considered by 30 June 2004;
- two reviews of bills proposed to replace legislation that has not been reviewed (the Maritime Bill, and the bill to replace the *Health Act 1911*); and
- the further consideration of matters arising from eleven reviews that have been considered by the Government:
  - licensing of auctioneers;
  - the exemption of State public sector bodies from the provisions of the *Caravan Parks and Camping Grounds Act 1995;*
  - the core practices review;

- the review of the regulation of corporate providers of medical services;
- the restrictions in the *Education Service Providers (Full Fee Overseas Students) Registration Act 1991*;
- restrictions in the *Electricity Act 1945* that impact on electrical engineers and "do it yourself" electrical work;
- restrictions in the *Gas Standards Act 1972* that apply to the manufacturing standards of gas appliances;
- the restrictions in the *Liquor Licensing Act 1988;*
- the review into the creation and allocation of additional pearl hatchery quota;
- the implementation of competitive neutrality for the Potato Marketing Corporation's operations and improvements efficiency in the supply chain; and
- licensing restrictions in the *Transport Coordination Act 1966*; and

- amendments to 44 pieces of legislation that have been reviewed.

In addition, seven reviews have been delayed by national processes (agricultural and veterinary chemicals, consumer credit, travel agents, weights and measures, cooperative and provident societies, drugs and poisons and petroleum).

2.1.2 Reform Implementation

The following legislation passed by Parliament in 2003-04 implements the recommendations of legislation reviews.

- The recommendations of the review of the *Legal Practitioners Act 1893* and related legislation were implemented via the Legal Practice Bill 2002 and the Acts Amendment and Repeal (Courts and Legal Practice) Bill 2002 (both were assented to on 4 December 2003). These Bills replace the *Legal Practitioners Act 1893* and reform the regulation of the legal profession in Western Australia. The reforms enable legal firms to incorporate and to form multi-disciplinary partnerships. National practising certificates are being introduced for lawyers in Western Australia, and those issued in other Australian jurisdictions will be recognised in the State.

  In addition, the Bills establish the regulation of foreign lawyers advising Western Australian clients on matters of foreign law, and strengthen the disciplinary powers of the regulatory bodies (the Legal Practice Board, the Complaints Committee and the Disciplinary Tribunal). A greater role will be provided for non-lawyers in the new regulatory framework, while new provisions will clearly prohibit unqualified persons from practising law.

- All parts of the *Acts Amendment and Repeal (Competition Policy) Act 2003,* other than part 6 (amending the *Eastern Goldfields Transport Board Act 1994*) and part 9 (amending the *Hire Purchase Act 1959*) were proclaimed on 20 April 2004 to be effective from 21 April 2004. Part 9 was proclaimed on 20 April 2004 to be effective from 1 May 2004, while the Government is still considering when to proclaim part 6. The Act incorporates:

  - repeal of the *Wheat Marketing Act 1989* and the *Bread Act 1982*;

  - amendments to the *Bush Fires Act 1954,* which makes provision for the prevention and control of bushfires, to remove the current exemption from local authority fire management laws of land owned or occupied by State government business and other agencies. State agencies and departments prescribed by the Minister for Police and Emergency Services will be required, along with private owners and occupiers of land, to comply with local government fire planning requirements of hazard reduction (load control) and firebreak maintenance;

  - amendments to the *Chicken Meat Industry Act 1977* to remove the need for approval of a processing plant, as health, safety and planning laws already cover this area. The obligation for growers and processors to enter into a prescribed form of fixed-price contract is also removed, and a new section is to be inserted into the Act setting out matters that the Chicken Meat Industry Committee may take into account when determining if a grower is an "efficient" grower for the purposes of the Act;

  - amendments to the *Conservation and Land Management Act 1984* (CALM Act) to repeal the necessity for concurrence from the Minister responsible for the *Mining Act 1978,* in the administration of the CALM Act in the area of the Greenbushes State Forest. The Act also removes the rate exemption for any increase in the value of land arising from planting of forest trees, if the trees were approved by the Executive Director of CALM as suitable for plantation uses. The section stipulates intensities of tree farming which remove private operators' flexibility in decision-making;

  - amendments to the *Eastern Goldfields Transport Board Act 1984* to remove the competitive advantages that the Board enjoys over its private sector competitors due to its statutory authority status, including the "agent of the Crown" status of the Board which grants privileges such as land tax exemptions, and the Board's current exemption from local government rates;

  - amendments to the *Edith Cowan University Act 1984* to ensure that Edith Cowan University is not unduly fettered by investment rules inconsistent with those of other universities;

- amendments making the tax equivalent arrangements for Gold Corporation and subsidiaries consistent with other significant government businesses;

- amendments to the *Hire Purchase Act 1959* to remove the application of the Act to all future hire purchase agreements, except for those sections providing for the right of a hirer to surplus monies remaining after repossession when the value of the repossessed good exceeds the amount outstanding under the agreement, giving a court the power to re-open hire purchase transactions which it considers to be harsh or unconscionable, and providing additional protection for farmers by restraining the repossession of farm vehicles and machinery. The objective of the retention of these provisions of the Act is the maintenance of standards in the negotiation and enforcement of future hire purchase transactions, so that hire purchase remains a viable and fair form of finance;

- amendments to the *Licensed Surveyors Act 1909,* to repeal the requirement that licence applicants be of "good fame and character" - this discretionary assessment is being replaced with a requirement that a surveyor's licence not be granted where an applicant has committed or been charged with an offence involving fraud or dishonesty - and to change the composition of the Land Surveyors Licensing Board to a broader membership including consumer representation;

- amendments to the *Perth Market Act 1926,* which remove the potential for the Perth Market Authority (the Authority) to discriminate between individual persons and produce, but still enables the Authority to set effective market times for whole classes of persons, kinds of produce, or purposes of entry. Further, the Authority's permission to grant exemptions to notices on an ad-hoc basis is removed;

- amendments to the *Sandalwood Act 1929* to allow licences for the pulling of sandalwood on private land to be granted in accordance with the State's overall environmental laws and policy, rather than according to whether the sandalwood is located on Crown or private land;

- removal of the State Supply Commission's exemption from stamp duty on the transfer of property or any other relevant liability, in accordance with the principles of competitive neutrality;

- amendments to the *Valuation of Land Act 1978* to replace the current qualification requirements of the Valuer-General with a competency requirement. However, the amendments still provide that the position requires a person who demonstrates a high level of qualification and experience in the valuation of land; and

- amendments to the *Western Australian Meat Industry Authority Act 1976,* to remove the potential conflict of interest which occurs when the Authority is both the regulator and the operator of saleyard facilities, by reinforcing the primary purpose of the Authority as a regulator of abattoirs and processing works, but not of saleyards. The amendments remove the Authority's power to reject an application to establish an abattoir on the grounds that the area is already serviced by another such facility, and remove the requirement for the Authority to approve structural alterations or additions to an existing abattoir after having regard to the existing abattoir facilities available in the area.

The recommendations of the legislation review of the Conservation and Land Management Act 1984 (CALM Act) and subsidiary legislation were further progressed via amendments to the Forest Management Regulations 1993. Restrictions relating to apiary permits granted under the CALM Act include:

- limits on who can have an apiary: a person must be registered as a beekeeper under the *Beekeeper Act 1963* and must maintain at least 25 bee hives in the State to be eligible for an apiary permit (Reg 73(2)); and

- limits on the number of permits a person may hold: no more than five permits can be held for every 50 hives kept by the person, for the areas defined by CALM as the south-west zone; and no more than four permits for every 50 hives kept by the person, for the remainder of the State (Reg 73(3)).

Regulations 73(2) and 73(3) have been repealed from the Forest Management Regulations 1993 under the Forest Management Amendment Regulations 2003, published in the Government Gazette of 12 August 2003.

Regulations restricting the maximum number of rock lobster pots, allowable per boat operating in the rock lobster fishery, were removed in October 2003. This will lead to greater efficiency within the industry because fishers will be able to operate from fewer boats thereby reducing the costs of rock lobster operations. The removal of the so called '150 pot rule' is in keeping with the findings of the NCP review of the *Fish Management Resources Act 1994* and Regulations.

Amendments were made to the *Taxi Act 1994* through the passage of the Taxi Amendment Bill 2003 in the 2003 Spring Session of Parliament. The Bill provides a basis for further reforms to the taxi industry by altering the way taxi licences are issued in Western Australia. Prior to the amendments being passed, new licences could only be issued by sale by tender. Now new licences can be issued by tendering licences for lease. As a consequence of the amendment, 48 new taxi licences were issued in March 2004. Further licence releases are planned in accordance with the Government's commitment to reform the taxi industry and provide better customer service while providing savings to drivers. Of the 48 new licences issued, 32 were conventional licences. This was the first time conventional licences have been issued since 1989.

In addition, the Statutes (Repeals and Minor Amendments) Bill 2001 received assent on 15 December 2003 as Act No. 74 of 2003. The Act made minor amendments to various pieces of legislation, and repealed a number of Acts, including the:

- *Northern Developments Pty. Ltd Agreement Act 1957*, and *Northern Developments Pty. Ltd Agreement Act 1969,* thereby removing the differential treatment awarded under the Acts; and

- *Wild Cattle Nuisance Act 1871*, thereby removing the Act from the legislation review table.

2.1.2.1 Bills Currently Before Parliament

The following legislation that will implement the recommendations of legislation reviews is currently before Parliament.

- The Architects Bill 2003 reduces restrictions on competition by broadening the composition of the Architects Board to include consumer and educational representatives, removing restrictions on ownership or control of corporations or firms, and removing restrictions on age, advertising, and use of derivatives of the word architect where such use is not false or misleading.

- The Veterinary Preparations and Animal Feeding Stuffs Amendment Bill 2003 will harmonise the approach between the States to control use of veterinary chemical products, by providing for regulatory powers over the use of veterinary chemicals in production animals, the sale of certain stock, stock products and carcasses of stock treated with veterinary chemical products, and the sale and use of various substances that promote growth in stock.

- The Children and Community Development Bill 2003 replaces the *Child Welfare Act 1947*, the *Welfare and Assistance Act 1961* and the *Community Services Act 1972* and expands the statutory review process to include day care outside school hours.

- The Dangerous Goods Safety Bill 2002 reduces restrictions on competition by aligning the licensing requirement for the manufacture of explosives with existing performance based controls for other chemicals, and amending the licensing restrictions on the storage of explosives to remove requirements for approval by inspectors, shifting responsibility for safety to the industry.

- The Retail Shops and Fair Trading Legislation Amendment Bill 2003 reduces restrictions on metropolitan retail trading, by confirming the current trading hours regime in the metropolitan and non-metropolitan area, extending weeknight trading to 9.00 p.m. for all general retail stores in the metropolitan area on 2 May 2005, and introducing the Small Business Legislative Protection Package.

2.1.2.2 Bills Currently Being Drafted or Awaiting Drafting Priority

The following Bills that implement significant NCP reforms are currently being drafted.

- Amendment to the *Marketing of Eggs Act 1945* are being developed following the Government's decision in June 2003 to deregulate the egg industry. An advisory group comprised of Government and industry representatives is currently developing the transitional path to a deregulated industry.

- The Medical Practitioners Bill 2004 will limit controls on advertising to those reflecting consumer protection legislation and will retain the Medical Board's role in monitoring advertising restrictions. The Bill will also free up the ownership restrictions on medical practices contained in the current legislation.

- The Water Industry Legislation Amendment Bill will address several restrictions on competition that relate to the monopoly power of the Water Corporation (for example in constructing drainage works, in preventing the on-sale of water that it has sold to a customer, and by removing various powers that a company would not normally have).

- The Food Bill will amend the Health (Adoption of Food Standards Code) Regulations 1992, the *Health Act 1911*, the Health (Food Hygiene) Regulations 1993 and the Health (Game Meat Regulations) 1992. The stand-alone Food Bill will adopt the national Food Standards Code in Western Australia, replacing the existing regulations.

- The Road Traffic Amendment Bill (No.2) 2003 will amend the *Road Traffic Act 1974,* to implement the final NCP reforms outstanding under the National Driver Licensing Scheme.

- The Planning and Development (Green) Bill will streamline and consolidate the existing planning legislation contained within the *Town Planning and Development Act 1928, Western Australian Planning Commission Act 1985,* and *Metropolitan Region Town Planning Scheme Act 1959*.

The following recommendations from legislation reviews that were considered by the Government in 2003-04 are currently awaiting drafting priority.

- The *Builders Registration Act 1939* will be amended in line with the review recommendations, to remove the prohibition of unregistered builders, instead allowing a limited number of builder categories consistent with the Building Code of Australia, and to allow a system of conditional licensing so that all potential builders rather than just those who have practised in non-covered regional areas may obtain conditional registration.

- The requirement for credit providers to be licensed will be replaced with a system of registration coupled with negative licensing, as a result of the review of the *Credit (Administration) Act 1984*, which was endorsed by Cabinet in July 2003.

- Various restrictions on competition in the *Debt Collectors Licensing Act 1964* will be removed as a result of the review of that Act, which was endorsed by Cabinet in August 2003. The restrictions to be removed include the current limits on fees chargeable to creditors by debt collectors and the current requirement that licences be renewed annually (to be amended to triennially).

- The requirement for employment agents to be licensed will be replaced with a system of negative licensing, as a result of the review of the *Employment Agents Act 1976*, which were endorsed by Cabinet in October 2003.

- The *Motor Vehicle Driving Instructors Act 1963* will be amended in line with the recommendations of the review. The definition of "driving instructor" will be amended, applicants for licences will be required to provide a National Police Clearance Certificate, relevant qualifications will be made compulsory, and instructors will be required to keep and produce prescribed records.

- The *Optical Dispensers Act 1966* will be repealed, after Cabinet endorsed the recommendations of the review in March 2004, finding that there is no evidence that practices carried out by optical dispensers pose a risk of harm to the public.

- A differential registration regime will be introduced in the painting sector so that the full requirements of licensing would not apply to specific market segments, such as fence painting, as a result of the review of the *Painters Registration Act 1961*, which was endorsed by the Cabinet in October 2003.

- The *Travel Agents Act 1985 And Regulations* will be amended following Government's decision in June 2003 to endorse the review's recommendations. The Act will be amended to ensure that qualification requirements in each participating jurisdiction are uniform, to increase the current licence exemption threshold to $50,000, and to remove the exemption for Crown-owned business entities.

- The *Veterinary Surgeons Act 1960* will be amended in line with review recommendations. The amendments will remove barriers to entry for non-veterinarians wishing to provide veterinary services, restrictions on advertising, restrictive premises registration provisions, and restrictions on ownership of veterinary practices by non-veterinarians.

2.1.2.3 Legislation Reviews Near Completion

Substantive reviews that are nearing completion include the reviews of health practitioner legislation, the *Pharmacy Act 1964* and the *Transport Coordination Act 1966.*

- Template health practitioner legislation is being introduced, which will remove the restriction that practices must be owned by a health practitioner and limit controls on advertising to those that reflect consumer protection legislation. The complexity associated with the associated core practice regulation has delayed the consideration of the Core Practices Review. The introduction of core practice regulation involves identifying specific clinical activities that have significant potential to cause harm and then determining which categories of health professionals should be permitted to undertake each activity.

- National processes have delayed the consideration of the review of the *Pharmacy Act 1964*. The recommendations of the CoAG Working Group will soon be considered by the Government, including the relaxation of the limit on the number of pharmacies a pharmacist or friendly society may own (currently a pharmacist may only own or have an interest in two and a friendly society is restricted to its holding in 1965).

- The review of the *Transport Coordination Act 1966* will be finalised in conjunction with the State's air services policy, which aims to ensure regular passenger transport services to rural and remote areas.

2.2 NEW LEGISLATION

In accordance with clause 5(5) of the CPA, Western Australia assesses all new legislation to determine whether it contains restrictions on competition and if so, reviews it accordingly.

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. The DTF likewise corresponds regularly on NCP matters with Departmental Chief Executive Officers and Ministerial Chiefs of Staff. Western Australia's *Public Interest Guidelines for Legislation Review*, circulated to all agencies and other interested parties, also promote the need for identifying restrictions in new legislation, and reviewing the legislation where there are restrictions, to determine that such restrictions genuinely further the public interest.

2.2.1 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.

The DTF 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. The DTF also 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 provide updates about proposals for new legislation from early in the process and can seek the DTF input on particular restrictions.

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

- The DTF receives from the Cabinet Office a copy of all submissions to be put to Cabinet concerning proposed new laws, generally ten days prior to the Cabinet meeting, for comment from an NCP perspective; and

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

Where the DTF 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. This advice is normally accepted. Where it is not, the DTF 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 *Public Interest Guidelines for Legislation Review*.

While NCP processes will in the future be scaled down, the DTF will retain a sufficient level of resources to maintain and monitor the effectiveness of gate-keeping arrangements and to ensure continuation of review and assessment processes for new legislation.

2.2.2 Progress with Review of New Legislation

Since June 2003, two laws have been identified as containing potential restrictions on competition, requiring complete clause 5 review. Other legislative 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 full clause 5 review.

These latter bills, which were not subject to full clause 5 review but nevertheless included significant treatment of NCP issues in their requests for Cabinet approval to draft, included:

- the Nuclear Waste Storage (Prohibition) Amendment Bill 2003, which gained assent in April 2004 as Act No. 2 of 2004. The Bill amended the *Nuclear Waste Storage (Prohibition) Act 1999*, extending the application of the Act to all nuclear waste, whether generated in Australia or overseas. It also introduced a new offence of transporting nuclear waste, and a power for the responsible Minister to seek an injunction to restrain activities associated with the storage or transportation of nuclear waste.

  The restriction on competition was found to be insignificant as the waste would be disposed of by the Commonwealth rather than by private providers competing to provide a waste storage service. The restriction was further found to be justified in the public interest, because of the potential damage to Western Australia's "clean and green" reputation from such waste being stored in Western Australia; and

- the Barrow Island Bill 2003, which gained assent on 20 November 2003 as Act No. 61 of 2003. The Bill ratified and authorised the implementation of an agreement between the State and the Gorgon Joint Venturers for a gas processing and infrastructure project, ensured minimal environmental disturbance on Barrow island, and provided for the support of conservation programs in similar bioregions. The Bill allowed the grant of titles for gas processing project purposes on Barrow Island, and allowed the underground injection and disposal of carbon dioxide on Barrow Island.

The gatekeeping reviews completed and endorsed by Government during 2003-04 included:

- the Genetically Modified (GM) Crops Free Areas Bill 2003, which gained assent on 24 December 2003 as Act No. 79 of 2003.

  The *Genetically Modified Crops Free Areas Act 2003* (the Act) formally allows for the issuing of Ministerial orders designating areas within the State, or the whole of the State, as an area within which a genetically modified (GM) crop cannot be grown. The Act is in accordance with the national regulatory system for gene technology, which empowers each State to manage marketing

risks to the State's production through designating areas to preserve the identity of GM and non-GM crops.

Western Australia's Act:

- provides that Ministerial orders, and any exemptions granted to those orders, are made by publication in the *Government Gazette* and are disallowable in Parliament; and

- allows for the cultivation of GM crops for experimental purposes under licence, thus allowing research into GM crop technology.

The review concluded that the Act itself contains no restrictions on competition but rather, provides for the making of Ministerial orders which have the potential to impose major restrictions on competition. The review recommended that the following proposed criteria be adopted in deciding whether to issue Ministerial orders designating areas as free from commercial production of GM crops:

- an assessment of the net public benefits of the specific commercial release; and

- an assessment of the marketing risks to non-GM producers and whether or not these can be addressed by other measures including segregation and identity preservation systems; and

- the Public and Bank Holidays Amendment Bill 2003, which will remove the main restriction in the *Public and Bank Holidays Act 1972* and bring Western Australia into line with other jurisdictions. The Bill:

  - removes the differential treatment between banks and other financial institutions such as credit unions and building societies. Currently under the Act, banks are prevented from legally opening on Saturdays; and

  - retains the definition of Saturday as a Public Holiday so that there is no interruption of other legislation regulating the banking sector, and bills of exchange or promissory notes that nominally fall due and payable on Saturday continue not to do so until the following working day.

  The review concluded that passage of the Bill would allow Western Australia to meet its NCP obligations in this area, as the amendments remove any differences between banks and other financial institutions either in terms of the range of services provided or the days traded.

2.3 LEGISLATION REVIEW MATTERS RAISED IN ASSESSMENT FRAMEWORK

Issues raised in the NCC's 2004 Assessment Framework are addressed in the following sections. These sections are structured according to the priorities detailed in Section 3 of Attachment 1 of the letter to the Under Treasurer of 5 November 2003, which provided the framework for Western Australia's 2004 assessment (*Attachment 1 refers*). The discussion in this section is limited to legislation reviews as the other matters (structural and related reforms and competitive neutrality issues) are discussed in other sections.

In all cases where the legislation review process is still under way, Western Australia is ensuring that the process will be finalised and any recommended changes implemented as soon as possible.

2.3.1 Specific Penalties

The following section discusses Western Australia's progress in relation to the following specific penalties that were incurred in 2003-04:

- a permanent deduction of 10% for non-compliance in respect of retail trading hours legislation (estimated at $7.52 million);
- a permanent deduction of 5% for non-compliance in respect of the regulation of liquor sales (estimated at $3.76 million);
- a permanent deduction of 5% for non-compliance in respect of the marketing of potatoes (estimated at $3.76 million); and
- a specific suspension of 5% for non-compliance in respect of egg marketing (estimated at $3.76 million).

The specific suspension of 10% for lack of transparency in water pricing (estimated at $7.52 million) will be discussed in the section entitled Water.

2.3.1.1 Retail Trading Hours

Following a review, which was completed in June 2003 and involved extensive public consultation, the Government decided to extend weeknight trading (Monday to Friday) to 9pm for all general retail stores in the metropolitan area.

The extension of weeknight trading will come into effect four weeks after the next general State election, due in early 2005. The main reason for delaying the change to trading laws is the election commitment made prior to the last State election not to alter trading hours in the term of the Government. The delay in implementing the change also provides a period of adjustment and certainty for the community and enables the Government to ensure appropriate safeguards can be put in place to overcome concerns about the power of 'big business' relative to 'small business'.

Amendments to the *Fair Trading Act 1987*, which will facilitate the extension of trading hours is currently before the Upper House of the Western Australian Parliament (Note that the amendment Bill specifies that extended weeknight trading will commence four weeks after the next State election.)

The legislative package to implement the extension of trading hours will also:

- amend the *Fair Trading Act 1987* to incorporate provisions prohibiting unconscionable conduct in business to business transactions;
- amend the *Commercial Tenancy (Retail Shops) Act 1985* to incorporate unconscionability provisions which specifically pertain to commercial tenancies; and
- allow the Commercial Tribunal to have jurisdiction to hear retail tenancy disputes regarding unconscionable conduct.

The Government's decision strikes a balance between competing economic, social, and consumer demands and provides an additional 12 hours of trading per week. Extending trading hours to include Sunday was considered, but the Government decided it was not in the public interest for the following reasons:

- concerns about the impact of Sunday trading on the leisure and family time of workers in the retail sector;
- concern about the potential for coercive employment practices that force people to work when they wish to keep Sunday free for the purposes of religious observance, participation in sport or other family or recreation pursuits;
- the competitive advantage of having extended trading hours for small retail shops enables them to compete with larger chains; and
- Sunday trading would force owner operators to spend more time working with a negative impact on family life.

There is already a significant degree of Sunday trading available in Western Australia in the tourism precinct and in community and suburban markets.

Western Australia is of the view that the restriction on Sunday trading provides a net public benefit to the public.

2.3.1.2 Liquor Licensing

In the previous assessment report, Western Australia had indicated that a package of reforms to liquor licensing arrangements was being developed to come into effect after the next election. Since that time, and in response to a clear indication that such a reform package would not successfully pass though the Legislative Council of the Western Australian Parliament, the package of reforms has been withdrawn. A new review is being established with a new terms of reference, which is being developed in consultation with major industry stakeholders.

2.3.1.3 Marketing of Potatoes

The NCP review of the *Marketing of Potatoes Act 1946* concluded that deregulation of the potato industry would benefit neither farmers nor consumers. The review recommended the continuation of the statutory marketing arrangements, in order to maintain industry stability in regional areas of the State and provide reliable supplies of potatoes to Western Australian consumers. The review found that:

- consumers benefited from lower prices, fresher product and a stronger regional economy as a result of the legislation; and
- due to the market power of major retailers, deregulation would disadvantage smaller growers while delivering uncertain and minimal benefits in the form of lower retail prices to consumers.

The Government's decision to retain the Act was made in the context of proposed changes to the legislation and to the operations of the Potato Marketing Corporation (PMC). An implementation advisory group was formed in September 2003, with the objective of recommending changes to the Act that would remove the major costs of the legislation as identified by the review, including measures to:

- implement competitive neutrality for the PMC's export activities;
- improve the efficiency of the PMC's operations;
- introduce a more market oriented system of potato quality standards, to improve price signals to growers and satisfy the requirements of retailers and merchants; and
- remove incentives for high-yielding varieties and overproduction (and therefore the risks of environmental degradation), possibly by specifying production entitlement in tonnage rather than area.

The advisory group's recommendations will be tabled in Parliament by 30 June 2004, and are being progressed jointly with the operational and effectiveness review required periodically under section 44 of the Act.

2.3.1.4 Marketing of Eggs

As part of the commitment of Western Australia to reform its egg marketing arrangements, the Minister for Agriculture established the Transition Advisory Committee to advise him of how best to implement a transition to full deregulation by 1 July 2007. Western Australia has undertaken a public benefit test that has shown that a net public benefit will arise if full deregulation is delayed. The NCC has been provided with a copy of the public interest test, which concludes that:

- a period of around 18 months is required to bring about the necessary regulatory and institutional changes for deregulation;
- an adequate transition is likely to reduce the direct costs required for regulatory and institutional change;
- an extended transition to 2007 will provide benefits to growers by providing time for them to adjust their operations to the new unrestricted marketing environment;
- delaying deregulation will have a minimal negative effect on the retail price of eggs or the range of product choice, which means that consumers are unlikely to be disadvantaged by a transition period;
- delaying deregulation could reduce the chance of price instability when deregulation occurs, which means that consumers may be advantaged by a transition period;
- immediate deregulation could compromise bio-security if disruption arising from deregulation is considerable and this risk could be reduced by an adequate transition period;
- delaying deregulation will allow for orderly institutional change and will not unnecessarily erode the functions (and therefore commercial value) embedded in the existing statutory entity Golden Egg Farms when it is privatised;
- immediate deregulation would eliminate quota value and add pressure on the Government for compensation payments, which would come at a cost to taxpayers;
- an adequate transition will allow prospective new entrants and competitors a period in which they can prepare for the new regulatory environment;
- a minimum period of six months will be required to bring about the necessary regulatory changes;

- new animal welfare regulations, which take effect in 2008, could combine with the financial costs of a rapid deregulation to reduce local production and increase costs to consumers; and

- the monopoly of Golden Egg Farms may be removed as soon as the entity is privatised (by 2005), while quota restrictions would remain in place until 2007.

In view of the balance of benefits and costs listed above, the Government concluded that the industry should be de-restricted as soon as possible (for example, by changing the maximum number of hens allowable without a licence and by introducing competition in the marketing arrangements after 30 June 2005) and fully deregulated no later than 1 July 2007.

Legislative amendments to facilitate this reform are being drafted and will be provided to the NCC as soon as they are available.

2.3.2 Suspension Pool

The NCC's 2003 assessment resulted in Western Australia incurring a competition payments suspension of 20 per cent ($15 million) for a number of outstanding legislation review items. The following sections discuss Western Australia's progress in relation to these reviews (the information sought by the NCC for each matter in the suspension pool is provided in Attachment 1).

2.3.2.1 Agriculture

2.3.2.1.1 Agricultural and veterinary chemicals legislation

In line with other States, Western Australia's A*gricultural and Veterinary Chemicals (Western Australia) Act 1995* adopts by referral the national *Agricultural and Veterinary Chemical Act 1984*. The Federal legislation provides for the licensing of agricultural chemical manufacturers and the regulation of sale and supply of low risk chemicals.

The national review of agricultural and veterinary chemicals legislation has been completed, and the Primary Industries Standing Committee (PISC) has endorsed three subsequent working group reports that accepted the review recommendations with respect to cost recovery by the National Registration Authority (NRA), the use of alternative chemical assessment providers by the NRA, and removal of the legislative requirement for licensing of agricultural chemical manufacturers.

The contestability of chemical assessment services and compensation for third party access to chemical assessment data are matters for the Commonwealth. Any changes that may be necessary to these procedures will be made first via amendments to Commonwealth legislation. Changes to the Western Australian

Act will be pursued in accordance with resolution of the relevant issues at the national level.

The *Agricultural Produce (Chemical Residues) Act 1983* currently provides for the regulation or prevention of:

- chemical residues in agricultural produce; and
- the use and disposal of agricultural produce in which chemical residues are present in excess of certain limits.

The Act will be repealed under the proposed Agriculture Management Bill, which is currently being drafted.

The Agriculture Management Bill will also repeal the *Aerial Spraying Control Act 1966,* which regulates the spraying of agricultural chemicals from aircraft.

2.3.2.1.2 Veterinary Preparations and Animal Feeding Stuffs Act 1976

The Veterinary Preparations and Animal Feeding Stuffs Amendment Bill 2003 will amend the *Veterinary Preparations and Animal Feeding Stuffs Act 1976* to provide for the control of use of veterinary chemical products. The Bill is at second reading stage in the Legislative Council, following introduction in May 2003.

In accordance with the recommendations of the NCP review of Agricultural and Veterinary Chemicals legislation, the Bill provides for regulatory powers over:

- the use of veterinary chemicals in production animals, while containing no additional controls on the use of veterinary chemicals on companion animals;
- the sale of certain stock, stock products and carcasses of stock treated with veterinary chemical products;
- the sale and use of various substances that promote growth in stock; and
- the production, importation, treatment, preparation for sale, marketing, storage and sale of animal feeding stuffs.

Passage of the Bill will harmonise the approach between the States to control use of veterinary chemical products. The Act will become the *Veterinary Chemical Control and Animal Feeding Stuffs Act 1976.*

2.3.2.1.3 Grain Marketing Act 1975

The *Grain Marketing Act 2002* has separated the roles of the regulator and the single desk marketer of prescribed grains in Western Australia, establishing the Grain Licensing Authority (GLA) as the independent regulator of bulk barley, lupin and canola exports from Western Australia:

- the Grain Pool Pty Ltd, formed from the privatisation of the Grain Pool of Western Australia and its merger with Cooperative Bulk Handling Ltd, holds the main export licence for bulk prescribed grains; and
- the GLA is responsible for considering applications for special export licences for bulk prescribed grains (barley, lupins and canola).

This provision for greater flexibility and competition in the grain export industry is a major legislative reform which maximises the benefit of competition in the market place, while retaining any identified price premiums arising from the exercise of market power advantages available to the single desk.

The first licences were effective from 1 November 2003, the start of the 2003 harvest. To date, since 22 September 2003 when the new licensing system came into effect, the GLA has approved a total of twelve licences:

- nine export licences for the bulk export of 433,000 tonnes of feed barley to the Middle East. These licences represent approximately 29% of Western Australia's feed barley production in 2003-04;
- one export licence for 48,000 tonnes of canola to the sub-continent;
- one export licence for 20,000 tonnes of lupins to East Asia; and
- one export licence for 35,000 tonnes of malting barley to Asia. This approval was provided through appeal to the Minister.

The GLA has declined applications for 318,000 tonnes of feed barley to the Middle East, 45,000 tonnes of canola to the sub-continent, and 40,000 tonnes of canola to Asia, in recognition of the marketing efforts of the Grain Pool. The latter application was the subject of an unsuccessful appeal.

The GLA has noted that not all special export licences have been shipped, and given most grain from the 2003/04 season is now committed, some licences are unlikely to be utilized to their maximum allowable tonnages.

Section 20 of the *Grain Marketing Act 2002* requires the Grain Licensing Authority (GLA) to report to the Minister annually, or whenever directed to do so by the Minister, on the operation and effectiveness of the licensing scheme administered by the GLA. The Ministerial Guidelines issued under the Act require this report to assess the existence and extent of price premiums available

to the main export holder due to its monopoly power. Accordingly, the GLA has commissioned an independent consultant to prepare an assessment which is in accordance with NCC requirements. Industry stakeholder were invited and have submitted comments on the operations of the GLA under the Act, to the GLA. The GLA will deliver the report to the Minister for Agriculture by the end of May 2004.

In addition, the Minister has announced a separate independent review into the benefits and costs to the State of the operations of the *Grain Marketing Act 2002* following the GLA's first season. Details of this review are expected to be announced shortly.

2.3.2.1.4 Chicken Meat Industry Act

The *Chicken Meat Industry Act 1977* was established to provide broiler growers protection from the market power of chicken meat processors. It achieved this by establishing compulsory collective bargaining arrangements between all growers and chicken meat processors.

Part 4 of the *Acts Amendment and Repeal (Competition Policy) Act 2003* amended the *Chicken Meat Industry Act 1977* in accordance with the recommendations of the NCP review. Part 4 was proclaimed on 20 April 2004.

The amendments remove the obligation for chicken farmers to enter into a prescribed form of fixed-price contract with processors. The new arrangements will retain the best aspects of collective bargaining protections while also providing greater choice to growers, by permitting growers to bargain individually with processors should they wish. Importantly, the amendments:

- remove the obligation for growers to enter into a prescribed form of fixed-price contract with processors, allowing growers to opt out of collective bargaining arrangements at their discretion;

- remove redundant restrictions on the establishment and approval of processing plants. These matters are already covered more appropriately under health, safety and planning regulations;

- broaden the scope of allowable regulations, to include the setting of environmental, animal welfare and health standards for growing premises;

  - The proposal to include regulation-making powers regarding animal welfare was an outcome of the review's consultation process. Industry maintained that adherence to voluntary codes of practice on health, environmental and animal welfare grounds should be a condition of registration as an approved grower, and that these codes should also be a condition of contract between all growers and processors. The regulation-making provision is required as, with growers able to opt out of collective bargaining arrangements, the State's biosecurity arrangements must be

maintained. The Minister for Agriculture would need to endorse any regulations before they became law;

- clarify the power of the Chicken Meat Industry Committee to refuse a licence for growing premises only on the grounds that the environmental, animal welfare and health standards are not being met. This provides increased certainty to industry by removing the potential for discretion or inconsistency in the licensing of growing premises; and

- retain the composition of the Committee, while broadening its powers to:

  - take into account a greater range of issues when setting prices (for those growers who elect to remain in the collective bargaining arrangements) and licensing grower premises; and

  - resolve a broader range of disputes between growers and processes.

2.3.2.1.5 Veterinary Surgeons Act

The NCP review of the *Veterinary Surgeon's Act 1960* was endorsed by Government in December 2001. The review found that the Act contains barriers to entry for non-veterinarians wishing to provide veterinary services, restrictions on advertising, restrictive premises registration provisions, and restrictions on ownership of veterinary practices by non-veterinarians.

The major recommendations of the review include:

- introduction of a competency-based licensing category known as 'veterinary service provider', to reduce the extent of barriers to entry for non-veterinarians wishing to provide veterinary services. Under these new arrangements a person will be able to perform certain acts of veterinary surgery if that person has passed a relevant course offered by a training organisation;

- repeal of the advertising provisions in the Act and Regulations and replacement with voluntary guidelines or a code of conduct;

- repeal of the restrictive aspects of the premises registration provisions, and replacement them with a voluntary code of practice; and

- repeal of the restrictions on ownership of veterinary practices by non-veterinarians.

The recommendations, along with various other non-NCP related changes, will be implemented through a specific amendment Bill to be drafted as soon as possible.

2.3.2.2 Fisheries

2.3.2.2.1 Fish Resources Management Act

The Department of Fisheries has prepared a comprehensive analysis of progress against NCP obligations to date. The analysis covers changes to regulations governing the rock lobster industry, in particular the removal of the so called '150 pot rule', and future review processes with respect to rock lobster management. The analysis also reviews the reforms associated with the aquatic tour industry and the rock lobster processing sector. A full explanation of review and reform progress is provided in Attachment 4.

2.3.2.2.2 Aquatic Tours

Ministerial Policy Guideline No. 12 (MPG No.12), issued under the *Fish Resources Management Act 1994* is being amended in order to address future licensing and management issues. Criterion 3.9(a)(ix) of MPG No.12, which requires that an applicant for a fishing tour operator's licence should demonstrate historical involvement in the fishing tour industry prior to the benchmark date of 12 September 1997, is proposed to be removed. It is proposed that applicants will need only to demonstrate their claim to a licence via criterion 3.9(b) ie. that their proposed activities will be carried out in an area that is not currently serviced by an existing fishing tour operator or for a stock or species which is not currently fully exploited.

The NCP Review of MPG No. 12 and subsidiary legislation was completed and considered by the WA Government in August 2003. As reported to the NCC in August 2003, the Government endorsed the review outcomes, as follows:

- That the following restrictions on competition are in the public interest and should be retained and reviewed according to NCP principles in 2005-06, in light of collected catch and effort data and the recommendations of the Wetline Review, the Aboriginal Fishing Strategy and the Recreational Fishing Reviews:

  - entry to the industry being based on historical involvement prior to the benchmark date of 12 September 1997;

  - spatial access to the industry being restricted along biogeographical zones;

  - allowable increases in passenger numbers being restricted to within grouping limits; and

  - prohibition on separation and independent sale of a fishing tour licence from a commercial fishing licence, in cases where one operator holds both licences;

- that the restriction prohibiting aquatic eco-tour operators from advertising that fish may be caught for a meal during the course of the tour, be revoked for the commencement of the 2003-04 licensing year (now in effect); and

- that all future policy or legislative management options for the aquatic tour industry be made according to the principles of NCP.

The Government also requested the Minister for Agriculture, Forestry and Fisheries to undertake further consultation with all stakeholders, including industry and potential entrants and the public, regarding the impact of restrictions, at the time of the review in 2005-06.

The principal reason for the constraint on fishing tour operators is linked to the issue of market failure should fishing access not be controlled. A limit on operator numbers is the only known regulatory mechanism to manage the take of finfish by the fishing tour sector. Such an approach is entirely consistent with well-established fisheries management practices.

A data review is to be finalised in 2005-06. Approximately five years of logbook data is necessary to smooth out fluctuations and distortions in the figures arising from environmental and other variables, in order that the distilled information is accurate enough to base further management decisions on.

Until the examination of catch and effort data is complete, at which point management options can be reviewed, entry into the fishing tour sector will continue to be via the pathways of licence transfer and by applicants demonstrating that their proposed activities will be carried out in an area which is not serviced by an existing operator or for a stock or species which is not currently fully exploited.

A full explanation of the current situation regarding aquatic tour regulation is provided in Attachment 4.

2.3.2.2.3 Rock Lobster Processing

The NCP review of rock lobster processing recommended that limits on the number of domestic processing licences be removed and that there be no restriction on the number of locations a licence holder could operate from.

The lifting of restrictions on the class of licence formerly known as *restricted* has occurred in full. In effect the significant changes that have occurred are that:

- there is no limit on how many domestic rock lobster processing licences can be issued;

- there is no limit on the product type that can be produced by domestic rock lobster processing licences; and

- there is no longer a limit on selling only within Western Australia - domestic rock lobster processing licences can distribute throughout Australia.

Restrictions on rock lobster processing licences are being retained in the export sector, for now.

The reason Western Australia has only partially lifted restrictions in the rock lobster processing sector, is that there are as yet unquantified but high consequence risks that compliance strategies and product reputation will be significantly undermined. It is the Government's view that by approaching the deregulation of the processing sector in a phased way it is possible to learn more about the identified risks and therefore better understand the management measures required to ameliorate them. Such an approach can also assist in managing the cost to society of the management program required to ensure that quality and compliance are not compromised.

Further information on the Western Australia's reasons for partially deregulating the rock lobster processing sector is provided in Attachment 4.

2.3.2.2.4 Rock Lobster Management

The NCP review, which was carried out in 1999, makes two broad recommendations about rock lobster management. They are that:

- an independent investigation be conducted in order to determine the benefits of moving to an output based management system; and

- the 150 pot maximum holding be removed and that boat licences be separated from pot licences.

The current management system, in place for the West Coast Rock Lobster Fishery, has been successful in achieving its primary objective, that is maintaining resource sustainability upon which a vibrant and valuable industry is based.

The fishery is producing considerable social and economic benefits to the community, regional Western Australia and to associated industries. Because of this, Western Australia will not entertain the risk of management failure materialising through inadequate examination or by ideology.

The Department of Fisheries and the Rock Lobster Industry Advisory Committee is to review and quantify any efficiency gains available to the fishery from changes to the regulatory regime, over the next two to three years. The review will include an assessment of the net benefits of restructuring the Western Rock Lobster Fishery towards an output-based management regime.

The comprehensive review, which is scheduled to be completed by 2006, will test the following issues:

- The benefits and costs of the management system as it stands today.
- The benefits and costs of a more advanced Individually Transferable Effort (ITE) management system that enables the manipulation of total effort within the fishing season.
- The benefits and costs of an Individually Transferable Quota (ITQ) management system that includes analysis of:
  - a constant Total Allowable Commercial Catch;
  - a variable Total Allowable Commercial Catch set on sustainability grounds only; and
  - a variable Total Allowable Commercial Catch set on sustainability grounds with a tonnage range to minimise large inter-annual fluctuations in product supply to the market.

The Minister for Fisheries has produced and released a public document that describes in detail the process and terms of reference (including specific objectives listed above) for the strategic review of the management arrangements for the Fishery. The Department of Fisheries has produced a tender document with the intention of hiring a consultant to undertake the project.

In the mean time, Western Australia has moved to de-restrict the industry by lifting the maximum rock lobster pot-holding restriction of 150 pots in the fishery in October 2003. This reform provides scope for the rationalisation of the rock lobster fishing fleet. It is leading to greater efficiency within the industry because fishers are no longer limited by the number of rock lobster pots they can operate from each boat in operation.

Regulations have also been drafted to improve the effectiveness of how licence entitlements in the rock lobster fishery are recorded. The amendments are a first step in decoupling pot licences from boat licences, providing for a higher level of security for those individuals investing in the fishery. Work will continue to examine the need for further legislative reform in this area.

Further detailed information on Western Australia's progress with de-restricting the West Coast Rock Lobster fishery and future directions is provided in Attachment 4.

2.3.2.2.5 Pearling Act

A new Pearling Act is being developed, with drafting instructions well advanced. The Bill is proposed to be introduced in the Autumn 2005 Parliamentary sitting. The Pearling Bill will incorporate many recommendations from the NCP Review of the Pearling Act and related legislation. Specifically, the Pearling Bill will:

- limit the discretion, of the Office of the Executive Director of the Department of Fisheries, by codifying (in regulation) the criteria to be used in reaching decisions. Where possible, restrictions currently contained in the Ministerial Policy Guidelines will be in the form of Regulations under the new Act; and

- provide access to an independent review tribunal, similar to arrangements under the existing *Fish Resources Management Act 1994*.

The following reforms are being implemented as part of the development of the Bill:

- review of the requirement that an applicant for a pearling licence have a minimum of 15 quota units;

- decoupling of licences for pearl farms from licences for pearl fishing. This decoupling will reduce barriers to entry to the industry, by removing the requirement for vertical integration - currently a hatchery operation cannot cultivate pearls from hatchery stock unless it has a commercial connection to a wild-stock licence holder;

- review of the requirement that prospective hatchery licensees acknowledge in writing that the issue of a hatchery licence will not lead to a pearling licence;

- removal of the requirement that a hatchery licensee must hold a pearling licence or have commercial contracts to supply someone who has a pearling licence;

- removal of the embargo on the hatchery licence condition that no oysters will be issued for pearl meat or mother-of-pearl production. Arrangements for mother-of-pearl are being considered as part of the new Bill; and

- the composition, focus and structure of the Pearling Industry Advisory Committee is to be considered in parallel to the review of the Act, and will be amended to reflect a more balanced representation of community interests.

In conjunction with the development of the new Act, a thorough review of compliance procedures and mechanisms is underway to ensure protection of wildstock, maintenance of the environment, and other fundamental aspects of the legislation. Any redundant regulations or compliance mechanisms will be removed during this process.

The Government remains concerned that Western Australia's pearling reputation could be damaged if the quota system were removed. A quota framework clearly drives the incentive within industry towards quality production. No other regulatory mechanism can achieve this. Quality must continue to be the focus of Australian producers.

The WA Government does however fully support the need, and is committed to, review of the pearl oyster hatchery policy with a view to increasing quota where justified in line with market demand adjustments. The development of a new strategy pertaining to the management of hatchery quota will take place over the next two years, prior to the expiry of the current hatchery policy in December 2005.

The Government is considering alternative mechanisms for both the determination and allocation of hatchery quotas. The review will include an analysis of options for more market driven means of distributing additional quota units including possible auctioning.

Further detail in support of the case for retaining the quota system, including information on current pearl market conditions and advice on Government's future directions with respect to regulation, is provided in Attachment 4.

2.3.2.3 Forestry

2.3.2.3.1 Sandalwood Act

Part 12 of the *Acts Amendment and Repeal (Competition Policy) Act 2003* amended the *Sandalwood Act 1929* in accordance with the recommendations of the NCP review. The amending Act was proclaimed on 20 April 2004.

The amendments removed the provision that no more than 10% of the total approved sandalwood harvest in any year may be sourced from private land (excluding plantations). The NCP review noted that:

- the objectives of the restriction would be equally achieved by the application of existing provisions of the legislation relating to quantities and areas able to be harvested under individual licences; and

- removal of the restriction would have the effect of allowing licences to be granted in accordance with generally applicable State environmental laws and policy, rather than according to whether the sandalwood is located on Crown or private land.

Accordingly, existing size restrictions on the pulling and removal of green sandalwood from Crown land have been applied also to private land licences.

In addition, if all of the green sandalwood on a particular property is above the minimum size requirement, then 10% of the living sandalwood trees are to be retained and not harvested.

2.3.2.3.2 Conservation and Land Management Amendment Act and Forest Products Act

The other outstanding legislative review obligation in the forestry portfolio was the joint review of the *Conservation and Land Management Amendment Act 2000* and *Forest Products Act 2000.*

The review identified the following restrictions contained within the *Conservation and Land Management Amendment Act 2000*:

- ineligibility criteria in relation to the position of Commissioner of the Conservation Commission;
- CALM is restricted to charging the full cost of providing or performing advice, services or facilities to the Commission; and
- the taking of water from land to which the Act applies may be made subject to requirements to hold a licence or permit granted by the Executive Director, and to the scope and conditions applicable to a licence or permit.

The review identified the following restrictions contained within the *Forest Products Act 2000*:

- ineligibility criteria in relation to the position of Commissioner of the Commission;
- the Commission must try to ensure that a profit consistent with planned targets is made from the exploitation of forest products while ensuring the long term viability of the forest products industry; and the principles of ecologically sustainable forest management are applied in the management of indigenous forest products located on public land;
- in entering into production contracts for the harvesting of forest products from land under the control of CALM, the Commission must enter into arrangements with the Executive Director of CALM in respect of access of any contractor and the contractor's employees and agents to the land; and must also obtain consent from the Executive Director for the construction or maintenance of roads or other infrastructure for the purposes of harvesting, for silvicultural and related works before or after harvesting, and regeneration works; and
- the price for the sale of forest products by the Commission must include certain specified components (section 59).

With the exception of one restriction in the *Forest Products Act 2000,* the restrictions were found to either not give rise to material costs, or for there to be no alternative and less restrictive mechanisms for achieving the regulatory benefits.

In relation to the restriction on competition imposed by section 59 of the *Forest Products Act 2000*, whereby the price for the sale of forest products by the Commission must include certain specified components, the review found that depending upon the interpretation given to the relevant provisions of the legislation, the restriction may give rise to commercial constraints on the Commission that are contrary to the use and sale of forest products to the best commercial advantage. The review considered that the costs of the restriction could be reduced by:

- provision of a mechanism to over-ride the requirements of section 59 in certain circumstances, such as subject to the approval of a relevant authority enabling prices to be established for sale of particular products that do not fully recover historical costs; and/or

- making it explicit that the pricing requirement applies to the pricing and sale of forest products *in toto*, rather than pricing for each individual forest product or sale of products.

The Minister recommended that the *Forest Products Act 2000* be amended to make it explicit that the pricing requirement in section 59 applies to the pricing and sale of products *in toto.*

In April 2004, the Government endorsed the recommendation of the review that the restrictions on competition contained in the *Conservation and Land Management Amendment Act 2000* and the *Forest Products Act 2000* provide a net public benefit and should therefore be retained, and that the *Forest Products Act 2000* be amended to provide for an *in toto* approach to pricing.

2.3.2.4 Transport

2.3.2.4.1 Taxis

2.3.2.4.1.1 Review of Metropolitan Taxi Services

The Western Australian Government reported the findings of a review of metropolitan taxi licensing arrangements in June 2003. The review group (that was chaired by the Hon. Graham Giffard MLC) consulted widely with all stakeholders including holding a forum 26 February 2003 to which consumer and industry representatives were invited and by surveying taxi drivers and taxi plate owners. The forum and survey provided Government with a range of stakeholder's perspectives on merits of different reform options.

The review recommendations were reported to the NCC in 2003. Subsequently, and in keeping with reform goals, Western Australia passed legislation that amended the *Taxi Act 1994* so that the Government can lease new taxi licences rather than sell them by tender as was required before the amendments were passed.

One of the problems faced in the taxi industry across Australia is the entrenched value of property rights associated with taxi licences. The property right (as reflected in the price of taxi licences) has proven to be a major obstacle to the aims of governments around Australia because it limits the ability of policy makers to respond to consumer demand for taxis.

The review report recommended that taxi plate owners be invited to revoke their ownership of taxi licence plates in return for fair compensation (reflecting the market value of the licence plate). The review report indicated that the offer to 'buyback' taxi licences should last for three years.

Shortly after the announcement of the review report, it became apparent that there was growing industry resistance to the suggestion that the buyback policy be adopted. As a result of this opposition, the Minister for Planning and Infrastructure announced that the buyback offer would not be made unless there were representations by industry seeking this to occur.

In keeping with the newly amended legislation and the commitment of Government to release more taxi licences in response to consumer demand, Western Australia advertised 48 new taxi licences (being comprised of 32 'conventional' taxi plates at $250 per week; four Multi-Purpose Taxi (MPT) plates at $100 per week; and 12 Peak Period plates at $50 per week) in December 2003.

There were just fewer than 200 applications for the licences.

Western Australia has developed a release mechanism and this is now the basis for future licence releases. The release mechanism is still being finalised but the following elements were included in the assessment of the number of licences that were announced in December 2003:

- scope to release additional standard licences each year, even where there is no increase in the demand for taxi services, in order to improve the levels of service provided to the community (such as improving the 'jobs not covered' statistic and the 'waiting time' statistic); and

- a requirement to release additional standard licences in proportion to the increase in demand for taxi services as measured by the number of jobs facilitated through the Perth metropolitan Taxi Dispatch Services of major taxi companies.

This mechanism will result in additional licences being made available before the end of 2004.

2.3.2.4.1.2 Hire cars

The 2003 Assessment Report notes that Western Australia does not limit the number of hire car licences but is critical of the limits impeding their capacity to compete with taxis. The 2003 Assessment Report notes that hire cars are required to accept only jobs that have been booked by phone (that is they are excluded from the hail and rank markets). Other restrictions are also criticised.

Given that there are no limits on hire car numbers, the restrictions on hire cars (such as not being able to operate in the rank and hail markets), are aimed at differentiating the hire car market and the taxi market. Western Australia considers that its hire car arrangements are the minimum required in order to properly differentiate taxi and hire car markets. As such any further de-restriction in the hire car industry would impact on the taxi industry in unintended ways. Taxi industry reforms are being treated discretely, as reported in the previous section.

2.3.2.4.1.3 Country Taxis

The Minister for Planning and Infrastructure's Parliamentary Secretary, Hon. Ken Travers MLC, undertook a review of country taxis in 2003 and released a Draft Report in January 2004. The report made 26 recommendations, with many of them having competition implications.

The draft report was made available to the NCC secretariat and the secretariat provided Western Australia with feedback on this in February 2004. The draft report is being amended to reflect the issues raised by the NCC.

The review concluded that it is in the public interest to continue to regulate the taxi industry outside of the Perth metropolitan area. However, it also found that further reforms would provide a greater net public benefit.

Other recommendations were that:

- a plate release mechanism be triggered if:

  the population of a town increases by more than half of the 'number of people in a town per cab', where the 'number of people in a town' is calculated at the time of the last licence release, (eg if there are 1000 people per cab at the time of last plate release, then the plate release mechanism would be triggered if the population of that town grew by 501);

  the industry or consumers approach the Department of Planning and Infrastructure to initiate a review; and

  the need for extra plates in a town has not been fully assessed for three years.

  additional taxi plates should be made available by tender where:

  the number of jobs per taxi has increased by more than fifty per cent;

  there has been a significant increase in waiting times or jobs 'not covered'; and

  stakeholder groups in the town, in response to a questionnaire, indicate that an extra taxi is required.

The recommendations, if implemented will increase the supply to taxis in regional towns across Western Australia, although it will do so in a measured way that will protect the interests of drivers and owners and in the long term protect the interests of consumers.

2.3.2.4.2 Maritime

The Maritime and Transport Legislation Amendment and Repeal Bill, to be presented in conjunction with the Maritime Bill, will repeal the existing maritime legislation and consolidate the current Acts into one.

Following the Machinery of Government Taskforce recommendations, the two Bills will broadly:

- improve and consolidate existing outdated marine legislation to provide industry with a more effective maritime environment in which to operate;

- provide for improved measures to ensure safety of shipping and the environment;

- allow the inclusion of administrative provisions in the maritime-specific legislation, rather than relying on overarching administrative provisions contained within the Transport Coordination Act 1966; and

- enable the creation of private multi-use ports.

The Department for Planning and Infrastructure is continuing to progress the requirements for the re-drafting of the legislation.

2.3.2.4.3 Transport Coordination Act

In 2002, following the collapse of Qantas, the State Government undertook an independent assessment of the ability of intrastate turbo-prop regular passenger transport (RPT) airline routes to support competition. The Intrastate Air Services Review found that limited regulation of intrastate turbo-prop RPT routes was in the public interest, as routes of fewer than 60,000 passengers annually would be unviable if serviced by more than one operator.

The independent assessment of air routes within the State was conducted as part of the *Review and Assessment of the Effectiveness of Air Services in Western Australia.* The review recommended that Government:

- adopt a more active regulatory regime to support routes with passenger movements below 60,000 per annum; and
- integrate mining charters and RPT scheduled air services to support regional communities.

In consideration of the review's recommendations, in 2003 the Government developed an Air Services Policy to ensure that such air routes are given the best opportunity of becoming viable and sustainable.

Central to that Air Services Policy is that Government:

- require operators on certain "one operator" non-jet air routes to be licenced, and to grant the relevant incumbent operator a licence for a period of two years to decrease the risk of destabilising existing services; and
- determine within 12 months from the initial granting of exclusive licences if a fully deregulated aviation environment can recommence at the conclusion of the two year period;
  - if so, to reintroduce deregulation at that time; or
  - if not, to proceed with an open and competitive tender process to allow successful sole-operators to commence operations at the conclusion of the two year period.

In 2003 the Government granted sole operator rights to Skywest on its network for a two year period ending April 2005, in accordance with the State's Air Services Policy.

The Aviation Ministerial Council (AMC) is continuing to progress the Government's decision on directions for future deregulation or continued regulation of the Skywest network beyond May 2005. The AMC directed the Department for Planning and Infrastructure (DPI), through the Strategic Aviation Committee, to advise the AMC by May 2004 if the Skywest network should remain regulated, or be deregulated, from May 2005.

The DPI has commenced this review and has commissioned Tourism Futures International and the Centre for Asia Pacific Aviation to assist with the task. Consultation with industry and other stakeholders including local government and tourism bodies, Chambers of Commerce and Regional Development Commissions, is being undertaken as part of the process.

2.3.2.4.4 Explosives and Dangerous Goods Act

The Dangerous Goods Safety Bill 2002 gained its second reading in the Legislative Council on 24 June 2003, following introduction to the Legislative Assembly in December 2002. The Bill repeals the *Explosives and Dangerous Goods Act 1961,* and the *Dangerous Goods (Transport) Act 1998* to create a single consolidated Dangerous Goods Safety Act. The Bill relates primarily to the safe storage, handling and transport of dangerous goods. The reforms reduce restrictions on competition, while recognising that some restrictions on the use of dangerous goods need to be retained in the public interest. Parliament has not required any amendments to the Bill.

2.3.2.5 Health

2.3.2.5.1 Health Practitioner Legislation

A recommendation of the review of the Department of Health's NCP Review of Western Australian Health Practitioner Legislation was that current practice protection provisions would be replaced by protection of a narrower scope of practices identified as core practices for that profession.

The Department of Health released a discussion paper to facilitate determination of core practices in accordance with NCP principles. A full assessment of whether a currently protected practice is a 'core practice' requires assessment of the relative risk posed by an unqualified practitioner measured against the risk posed by a qualified practitioner, taken together with the seriousness of the loss or damage liable to result from bad practice.

The practices being assessed include those of chiropractors, dental hygienists, dental prosthetists, dental therapists, dentists, medical practitioners, nurses, occupational therapists, optometrists, osteopaths, pharmacists, physiotherapists, podiatrists, and psychologists. The development of a core practice protection model is a significant reform. The Core Practices Discussion Paper released by the Department of Health in March 2003 sought substantial input and participation from health practitioners and other interested parties that have the expertise to be able to identify practices that should be restricted to health practitioner groups. The core practices review will be finalised by June 2004.

The Department of Health is working towards introduction of a package of health practitioner bills in June this year, comprising the Dental Bill 2004, the Chiropractors Bill 2004, the Optometrists Bill 2003, the Occupational Therapists Bill 2004, the Osteopaths Bill 2004, the Podiatrists Bill 2004, the Nurses Bill 2004, the Physiotherapists Bill 2004 and the Psychologists Bill 2004.

Based on the extensive consultation process and ongoing liaison with the health professions involved it is proposed that several important core practices issues will be dealt with and implemented at the time of introduction of the above Bills. For example, the licensing requirements for and definition of hypnosis will be removed from the psychologist's legislation. Dental prosthetists will be able to fit partial dentures under changes to be introduced with the Dental Bill 2004 and the Occupational Therapists Bill will provide for title protection only for occupational therapists with the broad practice definition being removed.

2.3.2.5.2 Medical Act

The aim of the review has been to develop proposals for new medical practitioner legislation for Western Australia, which will comply with competition policy principles and requirements, to replace the existing Act. The Minister of Health has submitted the review of the *Medical Act 1894* to Cabinet and sought approval to draft a Medical Practitioners Registration Bill. Cabinet has approved drafting of the Bill, which will replace the current Act.

The current ownership restrictions provided for in the Act will be removed. The Board will have a limited role in overseeing the provision of medical services by entities owned by non-registrants. This is consistent with the position adopted in other Australian jurisdictions.

The timing of new medical practitioner legislation has been influenced by the intention to establish a State Administrative Tribunal (SAT) for Western Australia. A key recommendation of the review of the Act was that disciplinary jurisdiction over doctors should in future be split between the Medical Board (which will retain responsibility for less serious matters) and an independent tribunal (which will hear and determine more serious matters). This split jurisdiction is consistent with the situation in a number of other jurisdictions (eg NSW, Queensland) and is intended to ensure that more serious complaints are dealt with under a more formal process that is separate from the day-to-day regulation of medical practice. The SAT will provide this higher-level tribunal in Western Australia. Legislation allowing for the establishment of the SAT was introduced into Parliament in June 2003 and has been referred to the Standing Committee on Legislation, which is due to report on 30 April 2004. Preparation of new medical practitioner legislation will proceed in parallel with the SAT legislation.

Consistent with other jurisdictions and consumer protection legislation the review of the Act has proposed to prohibit advertising of medical services in a manner which offers a discount, gift or inducement to attract patients where the terms and conditions of such an offer are not outlined. The Department of Health has indicated that prescriptive controls on the form and content of advertising by medical practitioners will be discontinued.

2.3.2.5.3 Pharmacy Act

The review of pharmacy legislation was the first national review of a profession commissioned under the NCP legislative review process. All States and Territories participated in the review.

The CoAG released the NCP Review of Pharmacy Final Report (the Wilkinson Report) in February 2000. The Wilkinson Report examined legislative restrictions in three specific areas of pharmacy practice and the commercial operation of the pharmacy industry:

- ownership of pharmacies;
- registration of pharmacists; and
- the location of pharmacies to dispense benefits under the Commonwealth Pharmaceutical Benefits Scheme.

The report made recommendations for the removal of or amendment to various provisions in each State's pharmacy legislation, such as Western Australia's *Pharmacy Act 1964*, and in the Commonwealth's Ministerial Determination under the National *Health Act 1953*, which were assessed as inhibiting competition and not being in the public interest.

The review found that, on balance, current pharmacist-only ownership restrictions provide a net public benefit and should remain largely unchanged.

The Prime Minister suggested CoAG provide a coordinated response to the Wilkinson Report, in order to promote national consistency in pharmacy regulation. A Senior Officials Working Group comprising Commonwealth, State and Territory Officers released their response to the Wilkinson Report which accepted most of Wilkinson's recommendations for implementation of reform. The proposed reforms included lifting restrictions on the number of pharmacies owned and nationally consistent and equitable treatment of Friendly Society pharmacies. The review also recommended phasing out rules on locating new and relocating existing pharmacies. After consideration of the Recommendations by the COAG Senior Officials Group the Report was forwarded to the States for implementation.

In line with the CoAG's CPA, the Department of Health has considered the recommendations in consultation with key stakeholders and the Minister will shortly seek Cabinet approval to implement legislative reform.

It is intended that a range of recommendations from the CoAG response to the National NCP Review of Pharmacy –will be incorporated in the legislation to replace the *Pharmacy Act 1964*.

2.3.2.5.4 Poisons Act

The review of Drugs, Poisons and Controlled Substances legislation (the 'Galbally Review') was one of a number of national reviews undertaken under the Competition Principles Agreement, after the CoAG requested examination of State and Territory legislation imposing controls on supply and use of drugs, poisons and controlled substances.

There are two broad classes of restriction on competition in medicines and poisons legislation: restrictions on who can supply, and restrictions on how these substances can be supplied. The controls seek to prevent harm to the individual and the community as a whole.

The Galbally Review considered the range of harms the legislative controls were put in place to alleviate. It established that while the use of certain poisonous substances can benefit the community, it also can and does cause harm, which might be expected to worsen under unrestrained deregulation. This harm should be reduced while minimizing the restrictions on competition, particularly by means of information available to consumers.

The Galbally Review concluded that most of the current controls provide a net benefit to the community as a whole in relation to the use of substances that have the potential to cause harm. It recommended change in the areas of:

- increasing national uniformity of regulation and administration of that regulation;
- maximising efficiency in the administration of legislation regulating the area of drugs, poisons and controlled substances;
- reducing the level of control where possible; and
- improving the net benefit to the community as a whole of those controls which rely on professional practice to be effectual.

The Australian Health Ministers Council (AHMC) is required by the Terms of Reference of the Galbally Review to forward the review report to the CoAG with its comments. In preparing its comments, AHMC is required to take account of the views of the Primary Industries Ministerial Council (PIMC), as a number of the Galbally Review recommendations potentially impact on the management of agricultural and veterinary chemicals.

The Galbally Review's final report was presented to the AHMC in January 2001. A Working Party was established – the Australian Health Ministers Advisory Council (AHMAC) - to assist in developing a draft response to the Galbally Review recommendations. The AHMAC forwarded its draft response to the PIMC for comments, and incorporated these into the draft.

AHMAC's final draft response to the Galbally Review was forwarded to the AHMC in July 2003. However, the AHMC is yet to unanimously endorse the response. Legislative changes implementing Galbally's recommendations in line with national directives will be designed and implemented in Western Australia following AHMC's decision.

Western Australia has already implemented some recommendations of Galbally, including:

- That the Commonwealth, State and Territory governments agree that, in order to minimise unnecessary costs to industry and consumers, all States and Territories should adopt all the scheduling decisions covered in the Standard for the Uniform Scheduling of Drugs and Poisons (SUSDP) by reference and in accordance with timelines developed by the National Drugs and Poisons Scheduling Committee.
- That Commonwealth, State and Territory governments agree that the provisions in State and Territory drugs and poisons legislation applying to licences for *Schedules 5* and *6* be repealed. Schedules 5 and 6 cover substances with low and moderate potential for causing harm respectively.

- That Commonwealth, State and Territory governments agree that State and Territory drugs and poisons legislation be amended to provide that *Schedule 2* poisons licence holders be permitted to sell all medicines containing *Schedule 2* substances. (This would be subject to the Medicines Scheduling Committee including the substances in an appendix to the *Standard for the Uniform Scheduling of Medicines and Poisons* to designate that the risk of diversion, poisoning or medicinal misadventure is such that the sale of that substance should only be from a pharmacy.) Schedule 2 substances are considered to be able to be used safely when available from a pharmacy where professional advice is available.

- That all Commonwealth, State and Territory governments agree that provisions in State and Territory drugs, poisons and controlled substances legislation be amended to the effect that they:

  - retain the requirements for recording wholesale supply of Schedule 2, 3 and 4 medicines, except for those provisions that mandate the form in which records are to be kept, which should be repealed;

  - repeal mandatory recording of the retail supply of Schedule 3 medicines (Schedule 3 products require supervision of a pharmacist for safe, effective use);

  - repeal the requirements for specific reporting of retail supply of Schedule 4 medicines (except those included in Appendix D of the Standard for the Uniform Scheduling of Medicines and Poisons);

  - repeal recording of Schedule 5 and 6 poisons in those jurisdictions that have such provisions;

  - repeal recording of the supply of Schedule 7 poisons at wholesale or retail level in those jurisdictions where there is other legislation within that jurisdiction that imposes requirements to meet the desired objectives (Schedule 7 substances have a high potential for causing harm at low exposure and require special precautions during manufacture, handling or use);

  - continue the consistency of the recording requirements for Schedule 8 medicines with the recording requirements relating to the supply of Schedule 8 medicines at wholesale level under the *Narcotic Drugs Act 1975* and the Customs (Prohibited Import) Regulations; and

- retain the requirements for recording of all wholesale and retail transactions of Schedule 8 medicines and to specifically enable such records be kept electronically (Schedule 8 covers products where, in addition to requiring an authorised prescriber to diagnose and prescribe the most effective treatment (Schedule 4), further restrictions are placed on prescribing large quantities, prescribing for long term treatment or in treating drug addiction).

2.3.2.5.5 Health Act and Food Regulations

The Food Bill is currently being drafted. The Bill will amend the Health (Adoption of Food Standards Code) Regulations 1992, the *Health Act 1911*, the Health (Food Hygiene) Regulations 1993 and the Health (Game Meat Regulations) 1992. The Bill will adopt the national Food Standards Code in Western Australia, replacing the existing regulations.

2.3.2.6 Legal Practices

2.3.2.6.1 Legal Practitioners Act

The recommendations of the review of the *Legal Practitioners Act 1893* and related legislation have been implemented via the Legal Practice Bill 2002 and an Acts Amendment and Repeal (Courts and Legal Practice) Bill 2002. The Bills replace the *Legal Practice Act 1893* and provide greater flexibility and competition within the legal profession. The Bills were both assented to on 4 December 2003 and proclaimed from 1 January 2004 (part 8 of the Legal Practice Bill 2002, governing foreign lawyers, was proclaimed from 1 April 2004). .

The changes to legal practice that the Bills introduce are:

- the capacity to create incorporated legal practices;
- the capacity to create multidisciplinary partnerships;
- the regulation of foreign lawyers wishing to practice in Western Australia to bring them into line with Western Australian lawyers;
- the introduction of the national practice certificate which allows practitioners from around Australia to be recognised automatically in Western Australia and vice versa;
- a broader definition of unsatisfactory conduct;
- new powers for the Legal Practitioners Complaints Committee and the Legal Practitioners Disciplinary Tribunal to take action against recalcitrant lawyers. For example, the Board can appoint a practitioner to undertake an inquiry as to the capacity of another to properly conduct their practice; and

- clearer provisions that prohibit unqualified people from practising law.

Incorporation will enable lawyers to operate in multi-disciplinary practices with other professionals. A single firm would be able to offer its clients a more complete range of services than a legal practice can currently provide.

The regulation of foreign lawyers will allow them to be registered in Western Australia and be subject to ethical and practice standards, trust account controls, disciplinary arrangements and professional indemnity insurance requirements similar to those to which local lawyers are subject and ensure that they contribute to a separate fidelity fund. These arrangements reduce the barriers to entry to foreign lawyers entering the local market clarifying the standards required of and regulation of legal practitioners. Importantly, a condition imposed on a foreign lawyer cannot be harsher than a condition that would apply to a local practitioner in the same circumstances.

National practice certificates will allow practitioners from around Australia to be recognised automatically in Western Australia and vice versa. Current arrangements (through the Mutual Recognition Scheme) require a practitioner from one State to apply to be registered in Western Australia, and similarly, Western Australian lawyers wishing to practice inter-State must apply for registration in the other State. National practice certificates remove the requirement to go through a registration process as the practitioner's right to practice will be automatically recognised. This will make inter-State practice less complex and considerably cheaper than under the Mutual Recognition Scheme.

The definition of unsatisfactory conduct will be expanded by adding to the existing grounds of unprofessional conduct, contravention of the Act and conduct that fails the test of the level of competence and diligence that could reasonably be expected.

With exceptions, anyone other than a certified legal practitioner cannot engage in legal practice. The need to protect the community from unqualified persons practicing law is seen as important and so a breach of this provision will result in a $10,000 penalty.

2.3.2.7 Occupational Licensing

Occupational licensing boards in Western Australia currently exercise both regulatory and disciplinary functions. Boards generally have authority to:

- licence people to carry on activities in designated professional, occupational and business areas;

- receive complaints about professional misconduct; and

- hear and determine the complaints, and impose disciplinary penalties.

Both the Gunning Inquiry and the Temby Royal Commission illustrated the need to separate the disciplinary function of professional and occupational boards and tribunals from their regulatory and investigatory functions.

In July 2002, the Attorney General released the report of the Western Australian Civil and Administrative Review Tribunal taskforce, which recommended the establishment of the SAT to take over the disciplinary functions of dozens of boards and tribunals in Western Australia. The independent tribunal would take over responsibility for, among other things the disciplinary proceedings affecting a variety of trades and professions.

The SAT is being developed for operation from July 2004, depending on the passage of the necessary legislation through Parliament.

Following the separation of the disciplinary functions of occupational licensing boards from their regulatory functions, the boards will remain responsible for registration/licensing, complaint handling and investigation. Existing boards will retain the following types of functions:

- the licensing power;
- the setting of regulations that govern conduct of licensed persons;
- the publication of guidelines to govern desirable conduct;
- encouragement of good education and training practices;
- complaint handling and investigation;
- the exercise of the power, where it exists under statute, to suspend a licence in urgent circumstances;
- the exercise of conciliation powers, where it exists under existing statutes, in respect of complaints that result in no disciplinary action being required; and
- the exercise of summary disciplinary power in circumstances of minor breaches of discipline, where the enabling Act provides for this. Where it is alleged that a breach of the Act has occurred this will be dealt with by the SAT.

A number of boards, tribunals and other bodies previously reviewed as requiring reform in line with NCP are to have their jurisdiction to hear disciplinary matters taken over by the SAT. When operational, the SAT will become a single disciplinary body and a single point of review of decisions regarding registration for the following Boards:

- Architect's Board of Western Australia;
- Builders Registration Board;

- Dental Board of Western Australia;
- Dental Prosthetists Advisory Committee;
- Chiropractors Registration Board;
- Land Surveyors Licensing Board;
- Nurses Board of Western Australia;
- Podiatrists Registration Board;
- Osteopaths Registration Board;
- Veterinary Surgeons Board;
- Finance Brokers Supervisory Board;
- Motor Vehicle Dealers Licensing Board;
- Real Estate and Business Agents Supervisory Board;
- Settlement Agents Supervisory Board;
- Hairdressers Registration Board of Western Australia;
- Occupational Therapists Registration Board;
- Medical Board of Western Australia;
- Electrical Licensing Board;
- Land Valuers Licensing Board;
- Optometrists Registration Board;
- Painters Registration Board;
- Plumbers Licensing Board;
- Psychologists Board of Western Australia;
- Pharmaceutical Council of WA (Pharmacists);
- Physiotherapists Registration Board; and
- Legal Practitioners Disciplinary Tribunal.

The benefits of moving to a single adjudicative body include:

- the removal of confusion in the public mind if one overarching tribunal is identified as the place to seek redress;
- the establishment of a body that, by adopting a less adversarial and a more inquisitorial approach, would develop procedures of a less formal, less expensive and more flexible kind than used in traditional courts;
- the potential for the development of best tribunal practices, both procedural and in terms of common decision making principles, across the various jurisdictions;
- in a democratic context, the provision of a more appropriate and timely means for citizens to obtain administrative justice;
- in many instances, the improvement in public accountability of official decision making flowing from heightened scrutiny of administrative decisions; and
- avoiding the ad hoc creation of new tribunals to provide administrative review in evolving areas of government decision making.

2.3.2.7.1 Motor Vehicle Driving Instructors Act

The NCC requested a review of the *Motor Vehicle Drivers Instructors Act 1963* (the Act) and Regulations in August 2001. The review was completed and presented to Government in October 2003. The review identified the major restriction in the Act to be that persons wishing to act as a driving instructor, within the meaning of the Act, must be licensed to do so. An applicant for a licence or licence renewal must:

- pay a prescribed fee (currently $24.90), be at least 21 years of age, and have held a drivers licence of the relevant class for a continuous period of at least three years;
- be of good character. Applicants are currently required to submit 2 character references with their applications. In addition, enquiries are made with the Western Australian Police Service as to criminal and traffic offences, and the nature of any convictions are considered;
- be a fit and proper person to act as a driving instructor, in particular applicants must undergo a medical assessment with a nominated medical practitioner. Applicants for licence renewal must undergo medical assessment at periodic intervals;
- be competent to teach persons to drive motor vehicles of the relevant class. To demonstrate this competency, applicants for a licence may currently either:

- pass two tests provided by the Department for Planning and Infrastructure, demonstrating competency to drive the relevant class of motor vehicle, and knowledge of the Road Traffic Act 1974. Applicants for licence renewal must currently re-demonstrate this competency and knowledge every 3 years. The assessment costs $45.60;

- attain a relevant qualification in lieu of undergoing the assessment. Once an applicant for a licence or licence renewal attains such a qualification, they are no longer required to undergo initial or periodic assessment via testing; or

- provide details of other relevant qualifications and experience as a driving instructor.

In addition, motor vehicles provided by driving instructors for supplying instruction must be fitted with duplicate controls, and rear view mirrors.

The review adequately considered alternative means of achieving the legislative objectives, including systems of negative licensing, voluntary accreditation, compulsory accreditation, self-regulation, transactional regulation, and no regulation. Neither of these approaches were found to achieve the legislative objectives as efficiently as the current licensing process.

The review concluded that:

- the costs to driving instructors of obtaining and maintaining a licence are not currently onerous, while licensing of driving instructors prevents the entry of persons into the industry, who are of inappropriate character or who are medically or otherwise unfit;

- given the young age and inexperience of many learner drivers, and the environment in which driving tuition is necessarily provided, the public benefits derived from the licensing restriction outweigh the costs.

The review recommended that the Act be retained, and amended to require:

- the definition of "driving instructor" to exclude persons who provide advice, instructions or demonstration in driving as an ancillary function in the course of their principal employment (eg truck drivers)

- applicants for licences to provide a National Police Clearance Certificate. This would increase the costs of acquiring a licence by $41.00;

- Schedule 1 to the Regulations have no reference to the former *Road Traffic Act 1974* offence of drunkenness, as that offence no longer exists;

- relevant qualifications be made compulsory in demonstrating teaching competency. The requirement to attain a prescribed relevant qualification rather than otherwise demonstrating their competency to teach driving, was widely supported by industry and the community. The various registered training providers offering the qualifications to be prescribed under the Act are subject to the regulatory framework of the State Training Accreditation Council. The cost of attaining such qualification varies, depending on the applicant's experience and any prior qualifications held. The maximum cost is currently in the vicinity of $950.00 to $1,250.00, while recognition of prior learning may reduce these costs to $295.00 to $425.00. The proposed qualifications are consistent with those in New South Wales and Victoria;

- licensed driving instructors to keep and produce prescribed records, to enable monitoring of compliance with the Act;

- the Director General be empowered to undertake inspections, make enquiries, enter premises, and accompany a driving instructor during the provision of instruction, in place of current re-demonstration of competency requirements; and

- the fitting of duplicate controls and rear vision mirrors to every vehicle 'utilised', rather than 'provided', by a driving instructor for the purposes of driving instruction, unless exempted (e.g. motorcycles).

The Government endorsed all the review recommendations, except the recommendation to amend the regulations to require duplicate controls on every vehicle "utilised", rather than "provided", by a driving instructor in the course of driving instruction. The recommendation would have precluded learner drivers from gaining licensed instruction in their own vehicles, and was unnecessarily restrictive. Victoria and Tasmania do not require any duplicate driving controls, while New South Wales requires driving controls only on vehicles "provided" by driving instructors, in accord with the existing arrangements in Western Australia.

The Government has approved the drafting of required legislative amendments to the Act to implement the recommendations of the review. The remaining recommendations will be implemented via regulatory amendment in the *Government Gazette*, or administratively as required.

2.3.2.7.2 Auction Sales Act

The review recommended that the licensing system be retained until a full legislative review of the Act is completed. At that time, unless justified by the review, the licensing system is to be repealed. It also recommended that, in the event of continued licensing, that the administration of such a system be the responsibility of a single Government organisation. A full legislative review of the Act is currently underway.

The NCP review found that licence fees, the licence application process and the 'fit and proper' person test do not appear to have significantly restricted access to the industry. The licensing of auctioneers has provided few real barriers to entry or restrictions on operating for auctioneers.

However while the costs of the licensing system (reduced competition, less innovation, higher prices) had been small it could not be demonstrated that the benefits (greater consumer confidence, easier enforcement) outweighed these costs. The review concluded that it is not in the public interest to continue with the current licensing arrangements for auctioneers.

The review noted that the future administration of the licensing function would increase the barriers to entry and restrictions on practice within the industry. Additionally, the impact of the Internet will make licensing of auctioneers operating in Western Australia less relevant. Under these circumstances the cost of the licensing system are likely to outweigh the benefits, strengthening the argument that the current system of licensing auctioneers should be removed.

However, during the NCP review it became clear that there is a need to consider the adequacy and scope of the provisions of the Act and investigate the need to include other provisions to regulate auctions and ensure fair competition. It was therefore recommended that a general review of the Act be undertaken to consider alternative mechanisms of regulation such as negative licensing, registration or certification.

2.3.2.7.3 Travel Agents Act

The Ministerial Council for Consumer Affairs (MCCA), which oversaw the national review of travel agents, presented its final report in November 2002. Western Australia agreed to implement the findings of the national review report in June 2003.

The national review report's findings agreed to by Western Australia are to:

- retain mandatory qualification requirements for travel agents;
- remove the exemption for Crown owned businesses; and
- increase the current licence exemption threshold to a turnover of $50,000 per annum.

It has also been agreed that there should be a review of Travel Compensation Fund (TCF) contribution arrangements for different types of travel agencies, with the view to establishing a risk based premium structure and amending its prudential and reporting requirements.

Progress is being made in all areas of implementation.

With respect to the review of TCF contribution arrangements, a joint working group (JWG) of the TCF (which is to report to MCCA though the Standing Committee of Officials of Consumer Affairs (SCOCA) has been undertaking a review since April 2002 following the collapse of Ansett. The JWG's final report is yet to be presented to MCCA. However, it is understood that recommendations presented by the JWG to SCOCA in November 2003 were not accepted and are currently being further developed.

On the issue of nationally consistent qualifications, a working group was appointed by the SCOCA in January 2003 to conduct a review of qualifications in accordance with the *Participation Agreement* (an agreement entered into by jurisdictions in 1986 upon which the national regulatory scheme for travel agents is based). The working group has recently proposed that qualification requirements be dispensed with for all but one category of licence (travel agents selling tickets or arranging international travel) however this proposal is subject to final stakeholder consultation and endorsement by MCCA.

With respect to the removal of the exemption for Crown owned business entities, Western Australia gazetted an Order under the *Travel Agents Act* in December 2003 which effectively repealed the exemption for other State and Territory Crown owned business entities operating in Western Australia. Removal of the exemption for Western Australian Crown owned business entities requires legislative amendment. It is proposed to include this amendment in the *Consumer Protection Legislation Amendment and Repeal Bill 2004*.

With respect to the lifting of the current licence exemption threshold to a turnover of $50,000/annum, this amendment was implemented by Order under the *Travel Agents Act* which was gazetted in December 2003.

2.3.2.7.4 Settlement Agents Act

The final review report was completed in March 2002. The review found that the requirement for settlement agents to be licensed should be retained in the public interest because the benefits of reduced risk of financial loss and increased consumer confidence outweighed the costs associated with reduced competition. The review recommended replacing provisions regarding the financial resources of agents with provisions preventing insolvent persons holding a licence. The review also recommended removing the residency requirements and replacing the cap on fees with an offence of 'demanding a fee that is excessive' and giving agents the option of arranging their professional indemnity and fidelity insurance through an insurer of their choice.

The Government endorsed the review report in May 2002. The amendments to the Act are being progressed together with amendments to the *Real Estate and Business Agents Act 1978* in a Bill that is being developed.

Recently regulations were amended to lift the maximum allowable fee charged for settlement services. While the cap on settlement agents fees has not been lifted completely, the lifting of maximum fees will allow for greater competition in fee setting.

2.3.2.7.5 Pawnbrokers and Second Hand Dealers Act

The review of the *Pawnbrokers and Second-hand Dealers Act 1994* was endorsed by Government in February 2003 and the review recommendations have been drafted into the Pawnbrokers and Second-hand Dealers Amendment Bill 2003. The Bill is awaiting Cabinet endorsement.

Amendments are recommended to lessen the administrative burden of the legislation while still achieving the objectives of the Act.

Other minor amendments, not restricting competition, will prohibit pawnbrokers and second-hand dealers from trading goods where identifiers appear to be removed. It will also enhance reporting requirements to authorities.

2.3.2.7.6 Debt Collectors Licensing Act

The review found that many of the restrictive provisions in the Act are in the public interest, but recommended that limits on fees charged to creditors by debt collectors and the requirement for written contract between creditors and debtors be removed. The review also recommended that licensing be extended to cover debt collectors' employees.

Amendments have not yet been drafted.

2.3.2.7.7 Employment Agents Act

The review of the *Employment Agents Act 1976* was endorsed by Western Australia in October 2003. It recommended that the Act be amended to:

- replace the requirement for employment agents to be licensed with a negative licensing scheme that will allow persons to be excluded from the employments agents industry if in breach of regulated standards or engaging in unjust conduct;
- relax the requirement to provide employees with a "Notice of Employment" where provision of such notice is impractical, subject to the consent of the employee;
- remove the need to seek approval of a scale of fees chargeable to employers; and

- allow fees to be negotiated between employment agents and employers but preclude agents from demanding or receiving any fee that is unjust, where there is no prior agreement.

The report also recommended that the restrictions in the Act be retained where they:

- prohibited the charging of fees to employees; and
- required statements of account to employees.

The proposed amendments to the Act are yet to be developed.

2.3.2.7.8 Hairdressers Registration Act

The NCP review of hairdresser legislation in Western Australia was endorsed by Government in February 2003. The review found that restrictions contained in the Act are in the public interest.

It is argued that the current system of registering hairdressers is in the public interest because there is no evidence that the quality of service is of a different standard in parts of Western Australia where registration is required compared with other parts of Western Australia or other jurisdictions where similar registration requirements do not apply.

Other states do not have an infrastructure that can effectively monitor and evaluate these issues, therefore no evidence can be produced to support or reject this assumption. Western Australia is the only State with an infrastructure that can, with any degree of accuracy, monitor and assess and provide statistical data on what is actually occurring in the workplace. This evidence is gathered, on a daily basis, through the inspection process conducted by the Board.

Evidence gathered through the inspection processes in WA indicate that there are a significant number of people working in the industry that do not meet the Minimum National Standard and who have no formal qualification, calling themselves hairdressers.

It is also quite common to find apprentices or semi-skilled operators practising hairdressing, who are left alone, in charge of a salon. This poses a serious safety and health risk to consumers from the improper use of hazardous chemicals and lack of compliance with Worksafe practices. The Board can and does act when such breaches are detected.

If the hairdressing industry in Western Australia is deregulated, there is potential for serious legal liabilities and insurance implications for all parties concerned including the consumer.

Registration is only granted to hairdressers who have demonstrated that they have achieved the minimum acceptable industry standard in particular competencies and are therefore qualified to perform those skills. This serves to provide a safeguard for consumers and protect them from unqualified or semi-skilled operators.

The concept of negative licensing for the hairdressing industry is seriously flawed and would not provide a net public benefit if implemented. It is already agreed in the NCC assessment document that negative registration provides a lower level of consumer protection than traditional registration. Given the fact that it is known that there are a significant number of unqualified or semi-skilled people already practicing hairdressing in a regulated environment, negative licensing would prove impossible to monitor and police and would have to rely upon consumers to identify the operators involved.

The Hairdressers Registration Board is totally self-funded by the hairdressing industry. It receives no government or public funding in the conduct and performance of its operation. Indeed, the hairdressing industry has demonstrated overwhelming support for the retention of registration and the Board as a means of ensuring protection for consumers and the maintenance of industry standards.

Experience has shown that hairdressing salons, like other commercial enterprises, are driven by the need for commercial viability and economic survival. Some businesses have a tendency to improve their commercial viability by cutting corners, especially if there are no accountability processes in place. The result of this practice is normally to the detriment of the client, the outcome of which is a decline in the safety, quality and service standards delivered to consumers. If Western Australia were to remove the regulations it is likely that these practices would increase.

2.3.2.7.9 Real Estate and Business Agents Act

Western Australia endorsed the review in February 2003. The review recommended that:

- licensing be retained;
- the board be allowed to recognise qualifications other than those prescribed; legislation include explicit criteria for determining conflict of interest and for deeming who has sufficient material and financial resources;
- restrictions on who may audit trust accounts be removed;
- the requirement for board approval of franchise agreements be removed; and
- only one director/partner need be licensed.

Western Australia is progressing amendments to the *Real Estate and Business Agents Act 1978* in conjunction with the amendments to the *Settlement Agents Act 1981*.

2.3.2.8 Insurance

2.3.2.8.1 Motor Vehicle (Third Party Insurance) Act

The previous Government endorsed the legislation review of the *Motor Vehicle (Third Party Insurance) Act 1943*. The review recommended amending the Act to allow the Minister to approve people other than the Insurance Commission of Western Australia (ICWA) to issue motor vehicle compulsory third party (CTP) insurance policies. However, the amendments had not been implemented prior to the change of government in 2001.

The Minister for Government Enterprises has decided not to pursue any reforms which will facilitate the privatisation of Compulsory Motor Vehicle Third Party Personal Injury Insurance in the State of Western Australia.

This decision has been reached following an examination of a Review (sought and accepted by the previous Government) of the *Motor Vehicle (Third Party Insurance) Act 1943*, undertaken in accordance with the State Government's obligations under the Competition Principal Agreement, plus the sustained and successful operation of the current scheme, underwritten by the Insurance Commission of Western Australia.

The previous Government recommended the *Motor Vehicle (Third Party Insurance) Act 1943* be amended to provide that the Minister may approve persons other than the Insurance Commission to issue motor vehicle third party policies, subject to any system change requiring further approval from Parliament.

The Minister considers that reforms should only be considered when a scheme is inefficient or in crisis. Such is not the case under the current scheme and the following factors, when considered in aggregate give rise to substantial public benefit which could not be guaranteed through privatisation:

- For the sixth consecutive year (which almost certainly will extend to a seventh, based on current projections) the premium for a private motor vehicle remains the lowest in Australia with the gap expected to widen in 2004-05. To further illustrate this point, at 30 June 1998 the second lowest premium in Australia was 6% more than that of Western Australia and this gap has steadily grown to 31% as at 30 June 2003.

- Benefits to claimants are equivalent to, or better than, those provided by alternative schemes throughout the other States and Territories of Australia.

- Cost efficient administration when compared to alternative schemes in other States and Territories of Australia.

- A Third Party Insurance Fund, which is fully funded with a solvency ratio at 30 June 2003 of 116% expected to increase to around 120% by 30 June 2004 (after applying a commercially prudent 75% level of confidence to the estimation of outstanding claims liabilities).

Furthermore, the collapse of the private insurer HIH also highlights the unnecessary risk to be contemplated when considering privatisation of social insurances. Every household in Western Australia that operates a registered motor vehicle is affected by the Compulsory Motor Vehicle Third Party Personal Injury Insurance scheme. It is therefore clearly in the motoring public's best interest that the benefits from a well managed and financially secure scheme should flow back to them, rather than to a select group of shareholders as would be the case in a privatised scheme.

Notwithstanding the above comments, the performance of the Government-owned monopoly will be monitored on an ongoing basis.

2.3.2.9 Superannuation

2.3.2.9.1 State Superannuation Act

Western Australia has completed its review and reform activity in this area. The legislation review of the *State Superannuation Act 2000* was completed and complied fully with Clause 5 of the CPA.

The *State Superannuation Act 2000* (the Act), which commenced on 17 February 2001, repealed both the *Government Employees Superannuation Act 1987* and the *Superannuation and Family Benefits Act 1938*. The *State Superannuation Regulations 2001* were also introduced under the Act with effect from 17 February 2001.

The Act and the Regulations together provide a more flexible, timely and responsive legislative framework that enables new superannuation initiatives to be addressed promptly via regulations as would occur through changes to trust deeds in other superannuation funds.

The Government Employees Superannuation Board (GES Board) is the monopoly provider of superannuation for public servants. While the GES Board maintains overall responsibility for investment of assets within the GES Fund, private sector service providers are largely responsible for managing the assets of the GES Fund. Specialist fund managers are selected by the Board in a competitive process and are subject to regular reviews of their performance.

The extent to which GES Fund members are able to select alternative superannuation funds for the investment of their employer contributions is dependent on the responsible Minister and the Treasurer approving proposals for other schemes or funds. The objective of this "head of power" restriction is to enable the Government to manage risks that will or may affect the financial rights or obligations of the Crown.

The legislation review of the *State Superannuation Act 2000* concluded that the "head of power" for choice of fund gives rise to a net public benefit and, accordingly, recommended that it be retained in the public interest. The conclusion and recommendation in relation to the restriction arose largely from the impact choice of fund may have the financial rights and obligations of the State and on members of the GES Fund.

There is no prima facie evidence that members of the State's public sector superannuation schemes would experience lower retirement benefits through reduced returns or higher costs as a result of a restriction on choice of fund.

In contrast, the introduction of choice of fund for members of the State's public sector superannuation schemes could potentially have a significant adverse impact on the State's ability to manage its financial rights and obligations.

It should be noted that a major reform under the State's new legislative framework for the provision of public sector superannuation has been the removal of the legislative restriction on choice of investment strategy for West State Super members from 1 July 2001. Member investment choice enables members to meet their individual superannuation needs and preferences by providing them with the ability to choose how their superannuation is invested.

It should be noted that, like employees of the Western Australian Government, the majority of employees in Australia are unable to specify the superannuation fund into which their employer contributions are paid, reflecting the nature of corporate and industry superannuation funds in the Australian superannuation market generally.

Further information on the public interest case for not providing choice of fund is provided in Attachment 4.

2.3.2.10 Workers Compensation

2.3.2.10.1 Workers Compensation and Rehabilitation Act

The review recommended that the Act be amended to remove the requirement for the Workers' Compensation and Rehabilitation Commission to approve chiropractors to practise chiropractic in the workers' compensation system.

Cabinet approved amendments which would incorporate NCP recommendations and other changes to the Act in May 2003. Cabinet has approved the drafting of the amendments and they are likely to be introduced to Parliament in the Spring Session of 2004.

2.3.2.11 Petrol Pricing

In its last progress report, Western Australia provided evidence that its petrol pricing arrangements resulted in a net public benefit to the community. However, the NCC reported that it "is confronted with conflicting views concerning the public benefit resulting from the restrictions". The NCC also quoted an ACCC report which disputed Western Australia's findings.

The main criticism by the NCC was that it considered the extent of the price and other benefits flowing from the restrictions as being ambiguous, "with price outcomes appearing to depend on the measurement time period.

The NCC also noted that it was concerned about absence of support for the restrictions by industry stakeholders.

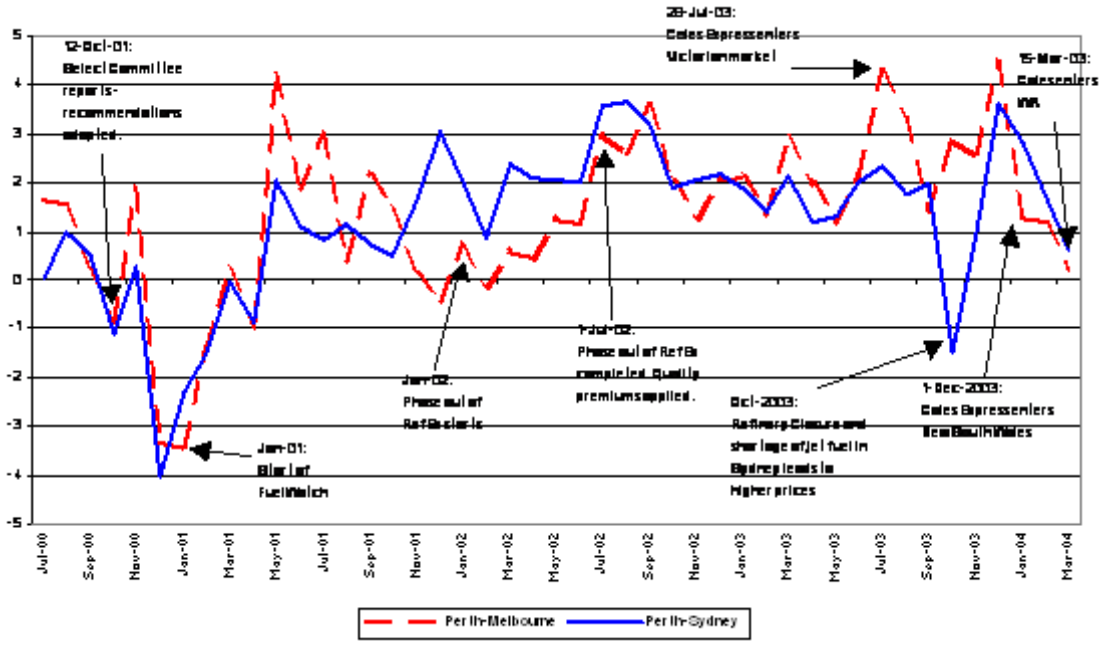
Western Australia notes that the ACCC report "Reducing Fuel Price Variability" of December 2001, concluded that Perth metropolitan average prices were lower than those in Sydney and Melbourne during the December quarter 2000 and the March quarter 2001 and were higher during the June and September quarters of 2001. The ACCC concluded that the shift in average prices may in part be attributed to the introduction of the Western Australian fuel pricing legislation and the introduction of the FuelWatch program.

This comparison of capital city prices has provided the basis for the argument that the Western Australian legislation and accompanying arrangements have had a detrimental impact on competition.

The comparison of capital city prices over the time periods referred to by the ACCC is misleading. The chart (below) indicates that over the period from July 2000 to March 2004 a number of distortions have occurred in the pricing patterns in Sydney, Melbourne and Perth as a result of exogenous shocks.

Perth / Eastern States Retail Fuel Price Differentials

Index C/Litre



Date

Note: Pricing data based on the average of all ULP retail prices in Western Australia.

Of particular relevance to the ACCC's observation is the impact of the Select Committee Report into fuel pricing during the December Quarter of 2000 and the introduction of the FuelWatch program in the January Quarter of 2001. Both events appear to have placed downward pressure on prices in Perth during those periods and as a consequence make those time periods unsuitable as an indicator of true differentials prior to the introduction of the legislation. In other words, it is not reasonable to conclude that Perth prices were typically lower than prices in Sydney and Melbourne prior to the introduction of the legislation on the strength of the average prices reported during those two quarters.

A more appropriate method for assessing the relativity of Perth prices to Sydney and Melbourne prices is to examine the differentials for the fiscal year 1 July 2002 to 30 June 2003. On 1 July 2002 all 'borrow and loan' arrangements that had been in placed between the major oil companies (referred to as 'Refinery Exchange' or 'REFEX') ceased completely and were replaced by commercial buy-sell arrangements. No other significant external factors impacted on the downstream petroleum market in the individual capital city markets during the following 12-month period. As a result differentials for that period can be assessed and compared with confidence. The result of the introduction of commercial buy-sell arrangements was that all unleaded petrol supplied from the BP Refinery in Kwinana after 1 July 2002 attracted a quality premium of approximately 1.7cpl as a result of the Western Australian fuel quality standards. The quality premium was not applicable in Sydney or Melbourne during that 12-month period. The impact of the quality premium on the final selling price in Perth after GST is applied was in the order of 1.85 - 1.90 cpl.

The actual average retail price differentials between Perth and Sydney and Perth and Melbourne for that twelve month period was 2.2cpl in both instances. Removing the impact of the Western Australian quality premium indicates that the underlying differential is actually in the order of 0.30-0.35cpl. It is also important to note that ULP receives a Victorian State Government rebate of 0.43cpl that is not applied in either Sydney or Perth. It is reasonable to expect that an underlying differential of that magnitude is reasonable given the size and structural differences in the Perth market relative to Sydney and Melbourne.

The conclusion can be drawn from the data that the introduction of fuel pricing legislation in Western Australia has not led to average higher prices once the impact of the fuel quality premium is taken into account.

Balanced against this, is the conclusion that better information has been provided to consumers who seek to make the most of lower prices which are advertised the day before through TV networks and on the FuelWatch Website. There is evidence, in an observed continued growth in the number of visitors to the FuelWatch Website, that Perth consumers are planning their fuel prices to make the most of more competitive rates being offered on any given day. The number of monthly visits to the FuelWatch website in March 2004 have quadrupled to over 190,000 since July 2002 and the number of subscribers to daily price emails has increased to over 15,000.

This view is further supported by a survey of a representative sample of metropolitan and regional motorists conducted in February 2004 by an independent market research firm on behalf of the Department of Consumer and Employment Protection. The survey found that 72% of surveyed respondents use the FuelWatch service. Of those, 80% found the FuelWatch information to be 'somewhat useful' or 'very useful' and 61% indicated savings of up to five dollars per week as a result of using FuelWatch. Sixty percent of all respondents indicated their preference for the Government to be the main provider of fuel price information (a further 20% didn't express a preference).

It is noted that there are some factors such as the increase in Singapore benchmark prices in the lead up to the Iraq War occurred during that period, that impacted equally on each of the individual markets and as a result would not have affected differentials. It is also noted that the quality premium is applied in US dollars per barrel and is subject to variation arising from changes in the US$ / Aus$ exchange rate.

2.3.2.11.1 Environmental Protection (Diesel and Pricing) Regulations

In the 2003 Assessment Report, the NCC concluded that Western Australia had not conducted a regulatory impact statement of the regulations. This is incorrect, as a review was conducted in November 1999 and was considered and endorsed by Government in February 2001.

Western Australia has led Australia in setting higher standards for unleaded petrol and this is now being matched by other jurisdictions as they move away from fuels that contain harmful additives. National unleaded petrol standards will align with the Western Australian specifications from 1 January 2006.

The reason other jurisdictions are following Western Australia's lead on this issue is that the benefits of reform outweigh the costs. It is assumed that the delay of other jurisdictions is to allow for a smooth transition period.

The benefits of reform are outlined in the review report as being the:

- likelihood of reduced morbidity and mortality due to improved air quality;
- likelihood of reduced health care costs due to improved air quality;
- avoidance of expensive treatment cost to remediate potable groundwater contaminated with Methyl Tertiary Butyl Ether (MTBE); and
- improved occupational health and safety in the mining industry, especially underground operations.

The minimal cost imposed by the restriction was reported in the 2003 progress report. It was reported that 'the BP refinery imposes a quality premium of US $1.60 per barrel (approx A1.62 cents per litre at 2003 exchange rates) for unleaded petrol supplied into the Western Australian market'. It was also reported that 'a recent survey undertaken by the RAC the majority of respondents (both members and non-members) indicated they were willing to pay up to an extra 2 cents per litre (cpl) for cleaner fuel'.

Western Australia is committed to ensuring its citizens benefit from safer fuel and a reputable industry survey has confirmed that the public supports this position.

A copy of the review report and the public interest justification is available on request.

2.3.2.12 Consumer Protection

2.3.2.12.1 Retirement Villages Act

The review of the *Retirement Villages Act 1992* was completed in 2002. The Retirement Villages Reference Group produced a discussion paper and responses were obtained from retirement village residents and associations.

In May 2002 the Government endorsed the review recommendations to amend the following:

- restrictions on the use of retirement village land: by making the process for the termination of a village scheme and the removal of a memorial from the whole or a part of the village land simpler and more cost effective;
- the Code of Fair Practice for Retirement Villages: by incorporating the existing Code and Act into a single Act; and
- restrictions associated with the marketing and price determination rights of residents: by providing residents with the right to be involved in the marketing of a unit, to receive monthly marketing reports and to have some price determination rights.

Amendments to the Act are being progressed.

2.3.2.12.2 Credit (Administration) Act

The review recommended that the licensing requirements be repealed and that many of the powers of the Tribunal and Commission be removed, but that the disciplinary provisions are retained on public interest grounds.

The Government endorsed the review recommendations. A public benefit argument for retaining the licensing requirement for payday lenders made it necessary to reassess the NCP review recommendations, to determine whether the amendments needed minor modifications. The original NCP report was re-examined to account for the relevant market changes. The amended report endorsed by Cabinet on 4 August 2003. The report recommended that the Act be amended to replace the licensing requirement for credit providers with a system of registration coupled with negative licensing; and replace the prohibition against persons having a business as a credit provider when in partnership with an unlicensed person.

WA will implement the endorsed recommendations through amendment of the Act.

2.3.2.12.3 Hire Purchase Act

Part 9 of the *Acts Amendment and Repeal (Competition Policy) Act 2003* amended the *Hire Purchase Act 1959* in accordance with the recommendations of the NCP review. The amending Act was proclaimed on 20 April 2004 to be effective from 1 May 2004.

The review found that:

- in most respects, the consumer protection provisions in the Act are obsolete. Since 1996, the Consumer Credit Code has applied to all forms of consumer lending and to all lenders throughout Australia. The Code is a uniform legislative scheme that regulates the provision of consumer credit across Australia;

- the Act effectively applies only to commercial hire purchase transactions, where the hirer is a corporation or the goods are to be used predominantly for business purposes. Although the Consumer Credit Code does not cover commercial transactions, continued application of the Act to commercial transactions is not necessary or justified, as:

  - parts IVA and V of the *Trade Practices Act 1974* provide a source of redress through the courts, against unconscionable or unfair conduct of corporate credit providers in commercial hire-purchase agreements; and

  - hire purchase is only one facet of commercial finance used by the small business sector, and "the only facet which retains inappropriately prescriptive consumer-like protection"; and

  - the cost to credit providers of complying with the Act's requirements places upward pressure on the costs of providing and obtaining hire-purchase finance, which distorts the market for credit and stifles innovation. Other commercial financing arrangements including chattel mortgages and leases, are not subject to specific regulation.

Existing hire purchase agreements will continue to be subject to the entire Act. New hire purchase agreements entered into after proclamation of the 2003 amendments will only be subject to selected provisions of the Act. These relate to surplus from sale of goods, equitable relief, and farm good purchases. The section in the Act which sets out the hirer's rights and immunities when goods are re-possessed has ongoing operation, apart from subsections which are contingent on notice requirements elsewhere in the Act.

Significantly, farmers will retain the right to defer court action for 12 months if there is a repossession action. The additional protection for farmers who purchase agricultural goods on hire purchase, enables them to take court action to defer repossession if they have not met their payments for up to 12 months, if they can establish that they could not meet the repayments because of seasonal variation in farm income.

2.3.2.13 Education

2.3.2.13.1 Education Service Providers

The review of the *Education Service Providers (Full Fee Overseas Students) Act 1991* was completed but is being reconsidered.

The review concluded that the legislative requirements dealing with the registration of education service providers are in the public interest and should be retained.

Outstanding issues are of a minor nature, with further consideration being given to:

- the reasons for the differential treatment arising from exemptions provided to some private schools under the regulations;
- the policies and guidelines that underpin the *Education Service Providers (Full Fee Overseas Students) Registration Act 1991* be reviewed in accordance with changes to the *Commonwealth's Education Services for Overseas Students Act (2000)* and the *Migration Act (1958)*; and
- the uniformity of audit conditions with other statutory providers such as universities and TAFE Colleges.

2.3.2.13.2 Universities

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. The amendments to the *Edith Cowan University Act 1984* were passed in December 2003 as part of the State's *Acts Amendment and Repeal (Competition Policy) Act 2003*, which was proclaimed on 20 April 2004.

Matters arising from the review of the universities' legislation relating to local council rates, State taxes and land tenure were deferred to the competitive neutrality review of the universities which has now been completed and endorsed by Government. The review of universities recommends the adoption of competitive neutrality by university business activities. Universities are now subject to competitive neutrality principles and the competitive neutrality complaints process in Western Australia.

The review recommended that where university activities are predominantly commercial in nature, they should be provided on a fee-for-service basis with direct outside competition. The review also recommended that universities should (in the main) introduce full commercial pricing policies.

2.3.2.14 Community Services

2.3.2.14.1 Community Services Act 1972

At present, provisions in the *Community Services Act 1972* and the Community Services (Child Care) Regulations 1988 regulate childcare and the registration of child carers in Western Australia. The Department of Community Development carried out a NCP legislation review of the existing childcare legislation, including the *Community Services Act 1972* and the Community Services (Child Care) Regulations 1988, which was agreed to by the Expenditure Review Committee at its 5 February 2003 meeting and subsequently endorsed by Cabinet on 10 February 2003.

The review recommended retaining the restrictions contained in the *Community Services Act 1972* and the Community Services (Child Care) Regulations 1988. The review also recommended that the current three yearly review process of the Regulations should be expanded to encompass the Outside of School Hours Day Care. Another recommendation was to examine, through the three yearly review process, prescriptive regulations with the view to moving towards an outcome-based system within the regulatory framework.

The Children and Community Development Bill, which will replace the *Community Services Act 1972*, the *Child Welfare Act 1947*, and the *Welfare and Assistance Act 1961* has received its third reading in the Legislative Assembly following introduction to Parliament on 4 December 2003.

2.3.2.15 **Gambling**

2.3.2.15.1 Lotteries and Totalisator Agency Board

The review recommended that the *Gaming Commission Act 1987* be amended to allow the Minister to enter into State agreements, ratified by Parliament, for the licensing of suppliers of lotteries in Western Australia if this is considered by the Government to be in the public interest. However, in October 2001, it was agreed to defer matters until Cabinet had an opportunity to consider regulatory issues associated with the Lotteries Commission.

In relation to the TAB, the recommendation of the NCP review is that the *Betting Control Act 1954* be amended to allow the Minister to enter into State Agreements, ratified by Parliament, for the licensing of persons or organisations to operate off-course betting services if this is considered by Government to be in the public interest. In October 2001, the position was not to progress this amendment at that time as the impact of the racing industry review was yet to be determined.

An outcome of the Review was the establishment of Racing and Wagering Western Australia (RWWA) as the controlling authority for thoroughbred, harness and greyhound racing in Western Australia together with responsibility for off-course TAB betting. RWWA commenced its racing industry controlling authority function on 1 August 2003 and assumed responsibility fot the TAB's activities on 30 January 2004. RWWA is currently conducted a full economic review of the racing industry and is yet to finalise this review.

No further action has been taken with the amendments on the basis that the introduction of competition into the off-course betting and lotteries markets may expand opportunities for gambling and this is not considered to be in the public interest. Also, it would not be in the public interest for the Government to licence additional operators of off-course betting service and lotteries that has a potential to threaten the $65 million that the Totalisator Agency Board (TAB) distributes to the racing industry and the $150 million that Lotterywest distributes to the Hospital Fund, the Arts, Sport and community grant recipients.

It is argued that Western Australia is unique in terms of its size and remote regions and, under the current exclusive trading privileges of the TAB and the Lotteries Commission, gambling services are made available to persons in these remote areas even though the costs of providing these services (particularly in relation to communications costs) means that services are generally uneconomic.

The introduction of competitors in the off-course betting TAB and lotteries markets, operating on a level playing field, would more than likely jeopardise the continued provision of these uneconomic services to regional areas.

Another issue surrounds the beneficiaries of these services. Currently, in addition to government taxes and services, the beneficiaries of the TAB and Lotteries Commission are the racing industry participants and the community grant recipients. The introduction of competition would more than likely be on the basis of private enterprise returning profits to share holders. This, the TAB and the Lotteries Commission argue, would dilute the returns to the current beneficiaries.

The Lotteries Commission has also highlighted that, unlike the TAB, there is currently no regulatory structure in place in terms of the Lotteries Commission's gambling activities. Any move to introduce competition in the supply of lotteries in Western Australia would require the establishment of a regulatory regime and that such a regulatory regime would need to be applied to all providers on a common platform. This would mean that the Lotteries Commission would be obliged to meet the cost of this regulation, to the detriment of the funds made available to its grant recipients.

The conclusion of the Productivity Commission in its 1999 Report into Australia's Gambling Industries was that the incidence of gambling related harm was linked to accessibility of gambling services. The report highlighted Western Australia's low incidence of gambling related harm and, to a large extent, attributed this to the limited accessibility of gaming machines.

The question of accessibility is also relevant to off-course betting and lotteries services. The introduction of competition to these markets, in the form of corporations established for private gain, can only result in increased availability in the community and the introduction of aggressive marketing, to the detriment of those susceptible to excessive gambling.

Attachment 4 provides further information on the public interest case for retaining the current lotteries restriction.

2.3.2.15.2 Betting Control Act

The Betting Control Regulations have been amended to reduce the limits from $200 to $50 in respect of metropolitan events and from $100 to zero in respect of country events. This basically matches the system of staged reductions implemented in Victoria and other interstate jurisdictions.

The remaining $50 metropolitan limit is to be removed by regulatory amendment, to take effect from 1 July 2004.

2.3.2.15.3 Western Australian Greyhound Racing Association Act

All review recommendations have been introduced through the enactment of the Racing Restriction Act 2003.

2.3.2.15.4 Casino (Burswood Island) Agreement Act

The Government endorsed the review recommendations which were that the main restrictions on conduct of casinos and casino games be retained.

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, they are of no effect because it is current Government policy not to grant new licences to prospective new entrants into the casino market in the Perth metropolitan area. The policy of not permitting the development of new casinos in the Perth metropolitan area is supported on the grounds that to do so would increase the harm posed by problem gambling if greater access to gambling facilities were made available in the community. The relationship between problem gambling and accessibility to table games was noted in the Productivity Commission Inquiry into the Australian Gambling Industry.

The costs to the State of removing this restriction or changing current Government policy appear to far outweigh potential benefits to be derived from generating intrastate competition in the casino gaming market.

Legislative amendments to the *Casino (Burswood Island) Agreement Act 1985* in order to remove the 10% individual shareholder limitation have taken effect as have amendments to introduce a three-tier taxation system for a ten year period which varies the rate varies according to whether the gambling format is video gaming machines, table games or international business.

Since their enactment, the major shareholder's stake in the Burswood Island Casino has increased from 10% to 15%.

2.3.2.16 Planning, Construction and Development Services

2.3.2.16.1 Planning

The NCP review of the planning legislation originally examined both the proposed *Urban and Regional Planning Bill 2000* (URP Bill) and the existing planning legislation. However, the previous Government's URP Bill was not proceeded with.

The current Government has reactivated the consolidation of the planning legislation, with a particular focus on streamlining the planning system. The Government anticipates introducing a *Planning and Development Bill 2004* into Parliament later this year.

In recognition of the importance of progressing competition policy review of the planning legislation, it was decided to progress the review of the existing legislation independently of any future amendments. This review will be considered by Cabinet prior to June 2004. The *Planning and Development Bill 2004*, once finalised, will be assessed under separate gatekeeping provisions prior to its introduction to Parliament.

The planning legislation consists of the *Town Planning and Development Act 1928*, the *Metropolitan Region Town Planning Scheme Act 1959* and the *Western Australian Planning Commission Act 1985*. These Acts will be streamlined and consolidated via the proposed Planning and Development Bill 2004.

In August 2003, Government approved the drafting of a revised Green Bill (Planning and Development Bill) and associated Consequential Provisions Bill (Planning and Development (Consequential Provisions) Bill) to implement the consolidation and streamlining of the planning legislation.

Once drafted, the revised Green Bill will be released for public comment before proceeding to a White Bill for introduction into Parliament. As part of consultation on the Green Bill, comment will be particularly invited on the competition issues associated with the Bill. The White Bill will be assessed for competition policy impacts prior to its introduction to Parliament.

2.3.2.16.2 Weights and Measures Act

The *Weights and Measures Act 1915* has not been reviewed, as it will be repealed upon the enactment of new trade measurement legislation, which is to be based on the national model. Cabinet permission to draft new legislation has been obtain (August 2003) and drafting is currently underway. An NCP review of the Commonwealth uniform trade measurement legislation has been completed at the national level. The State's position with regards to weights and measures legislation will conform to national standards.

2.3.2.16.3 Local Government (Miscellaneous Provisions) Act

Cabinet considered the *Local Government (Miscellaneous Provisions) Act 1960* in April 2004 and decided that the provisions of the Act that are the responsibility of the Minister for Local Government and Regional Development do not contain restrictions on competition. Cabinet noted that the review of the remainder of the Act and subsidiary legislation, administered by the Minister for Housing and Works, including the Building Regulations 1989, would be progressed independently.

The Department of Housing and Works (DHW) is currently in the process of developing new building legislation to replace the *Local Government (Miscellaneous Provisions) Act 1960* and the *Building Regulations 1989*. This new legislation will establish a framework for building regulations and specify a process for granting building approval. The legislation will take into consideration NCP reform requirements by adopting the Building Code of Australia as the primary building standard, introducing competition into the building approval and certification process, and providing a registration system for appropriately qualified building surveyors.

Building standards are currently set nationally through the Building Code of Australia (BCA), which is published by the Australian Building Codes Board (ABCB). The role of the ABCB and the success or otherwise of the BCA are to be reviewed later in 2004 prior to the expiry of the current inter-government agreement in 2005. The Productivity Commission is required to undertake a research study examining the contribution that national building regulatory reform, under the auspices of the ABCB, has made to the productivity of the building and construction industry.

Although the Productivity Commission review will analyse the national approach, it is likely that the current national approach will be retained. However, it is not prudent to implement the old nationally agreed approach in new building legislation for Western Australia until the recommendations of the national review have been considered.

In the meantime, the Minister is considering amending the *Local Government (Miscellaneous Provisions) Act 1960* and associated regulations to introduce contestable certification services for building approvals.

2.3.2.16.4 Architects Act

The Architects Bill 2003 remains at second reading stage in the Legislative Assembly, following introduction on 26 November 2003.

The Bill is in keeping with all of the IGWG recommendations. Specifically, the Bill:

- broadens membership of the Architect's Board to include industry, consumer and educational representatives;
- contains no restrictions on practice, it protects title only;
- restricts the title "architect" to registered persons only, but permits derivatives which describe a recognised competency, for example landscape architect, or architectural draftsperson to be used by non-architects;

- allows that only natural persons may be registered as "architects", while organisations offering the services of an architect must have adequate arrangements in place to ensure an architect supervises, controls, and is ultimately responsible for the architectural work provided;

- modifies complaints and disciplinary procedures to introduce an informal conciliation and inquiry process, and provide avenues for appeal; and

- moves requirements for registration to the regulations, and refers to a national standard setting body, the Architects Accreditation Council of Australia (AACA).

2.3.2.16.5 Licensed Surveyors Act

Part 10 of the *Acts Amendment and Repeal (Competition Policy) Act 2003* amended the *Licensed Surveyors Act 1909* in accordance with the recommendations of the NCP review. Part 10 was proclaimed on 20 April 2004.

The amendments:

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

2.3.2.16.6 Valuation of Land Act

Part 14 of the *Acts Amendment and Repeal (Competition Policy) Act 2003* amended the *Valuation of Land Act 1978* in accordance with the recommendations of the NCP review. Part 14 was proclaimed on 20 April 2004.

2.3.2.16.7 Painters Registration Act

The first review of the *Painters Registration Act 1961* was completed in 1998. The review concluded that the current system of mandatory licensing was too restrictive and should be removed. The review recommended a certification scheme be developed to allow consumers to readily identify painters who possess particular skills. It also recommended negative licensing be introduced.

However, due to concerns about the rigor of the analysis of the first review, a second review was conducted which was endorsed by Western Australia in 30 October 2003.

The review recommended that the following restrictions on competition be removed or lessened:

- amending the definition of 'painting' to specifically exclude mural and streetscape painting from the regulatory regime;

- removing the Board's power to regulate 'do-it-yourself' painting;
- allowing for differential registration requirements so that the full requirements of licensing would not apply to specific market segments – such as fence painting;
- allowing Ministerial exemption of specific market segments where registration is not in the public interest;
- increasing the monetary threshold for painting work which would require the use of a licensed painter;
- reducing the age at which a person may be registered from 21 to 18; and
- providing for the automatic registration of persons who have completed a painting apprenticeship without the need for those persons to undertake further examinations.

A public interest justification for the retention of registration is provided in Attachment 4.

2.3.2.16.8 Gas Standards Act

The review of the *Gas Standards Act 1972* was endorsed in March 2004 and concluded that restrictions governing gas fitters are in the public interest. The restrictions:

- require competency standards for gasfitters; and
- provide for sanctions for aberrant behaviour of gasfitters including provisions for the cancellation of individual licences.

However, the review did not address restrictions applying to the manufacturing standards of gas appliances. Western Australia is in the process of reviewing these restrictions in accordance with concerns raised in the last assessment report.

2.3.2.16.9 Electricity Act

The review of the licensing provisions contained in the *Electricity Act 1945* found that restrictions governing electricians are in the public interest. However, Western Australia is to re-consider how the restrictions impact on electrical engineers and 'Do It Yourself' electrical work.

2.4 OUTSTANDING NON-PRIORITY LEGISLATION

Western Australia's progress on reviewing its outstanding non-priority legislation is provided in Attachment 5, the Legislation Review Database for Western Australia.

3 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 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. 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.

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 so by the competitive advantage alleged to be enjoyed by the agency.

3.1 PROGRESS OF COMPETITIVE NEUTRALITY REVIEWS

Western Australia has recently 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. Western Australia has completed 26 competitive neutrality reviews of significant business activities.

Given the extent of legislative amendments required for implementing competitive neutrality, consideration is being given to including these amendments in umbrella legislation for statutory authorities. Umbrella legislation would contain generic provisions applicable to all government business enterprises, with a separate class of generic provisions that relate only to the subset of these agencies that are corporatised and commercialised.

Omnibus legislation containing competitive neutrality amendments to the *Eastern Goldfields Transport Board Act 1984*, the *Gold Corporation Act 1987*, and the *State Supply Commission Act 1991* passed through Parliament in 2003, receiving assent on 15 December 2003. All parts of the *Acts Amendment and Repeal (Competition Policy) Act 2003,* other than part 6 (amending the *Eastern Goldfields Transport Board Act 1994*) and part 9 (amending the *Hire Purchase Act 1959*) were proclaimed on 20 April 2004 to be effective from 21 April 2004. Part 9 was proclaimed on 20 April 2004 to be effective from 1 May 2004, while the Government is still considering when to proclaim part 6.

3.1.1 Gold Corporation

The Review of the *Gold Corporation Act 1987* and Regulations, undertaken to fulfil both competitive neutrality and legislation review obligations, recommended several amendments to the act to remove the competitive advantages enjoyed by the Gold Corporation and its subsidiaries. These include:

- the Gold Corporation paying a fee for its Government guarantee on liabilities;
- removing the Western Australian Mint's statutory exemptions from rates and taxes; and
- applying an income tax equivalent regime to the Gold Corporation.

These measures are being implemented through part 8 of the *Acts Amendment and Repeal (Competition Policy) Act 2003*, which was proclaimed on 20 April 2004.

3.1.2 Eastern Goldfields Transport Board

The *Eastern Goldfields Transport Board Act 1984* provides for the Board to undertake both:

- public transport services in the city of Kalgoorlie-Boulder and in any adjoining municipal districts. There is no competition to the Board for these services; and
- charter services to meet the needs of any district in which the Board is permitted to operate. The Board tenders for these services in competition with the private sector.

A private competitor in the charter transport market has made repeated informal complaints to the DTF and the NCC regarding the competitive advantages enjoyed by the Board. As a competitive neutrality review of the Board has not been undertaken and endorsed by Government, a formal complaint cannot be made.

The complainant considers that the Board is undercutting its competitors in the provision of charter transport services, due to its statutory authority status, its lack of transparency in reporting and its receipt of an annual subsidy equal to its total operating loss. The competitor claims that the Board cross-subsidises their charter operations with the public transport subsidy, to reduce their cost of service provision when tendering for charter work in competition with the private sector.

The annual report of the Board does not contain sufficient information to verify or refute the claim. The informal complaint has been forwarded to the Minister for Planning and Infrastructure for her consideration.

The legislation review of the *Eastern Goldfields Transport Board Act 1994* recommended the amendment of provisions in the Act which confer a competitive advantage on the Board to the detriment of private competitors in the charter transport market. The amendments are competitive neutrality requirements, which will help to ensure that the Board does not undercut small private businesses in the charter transport sector by virtue of its statutory authority status.

Part 6 of the *Acts Amendment and Repeal (Competition Policy) Act 2003* removes the competitive advantages that the Board enjoys over its private sector competitors due to its statutory authority status:

- section 5(2) of the Act is amended to remove the "agent of the Crown" status of the Board, which removes associated privileges such as land tax exemptions; and

- section 35 of the Act is repealed, thereby removing the Board's current exemption from local government rates.

The amendments will result in the Board facing some of the taxes and rates of its private sector competitors in the charter sector, ensuring fairer competition with private sector providers of charter services.

Although the *Acts Amendment and Repeal (Competition Policy) Act 2003* was proclaimed on 20 April 2004, part 6 amending the *Eastern Goldfields Transport Board Act 1994* has not been proclaimed at this stage.

3.1.3 State Supply Commission

The *State Supply Commission Act 1991* empowers the State Supply Commission to buy and sell assets and services on behalf of Government. Up until now, government businesses have not been required to pay stamp duty on property transactions. This is contrary to competition policy principles aimed at ensuring that the commercial activities of government are treated in the same manner as the private sector in the application of taxation.

Part 13 of the *Acts Amendment and Repeal (Competition Policy) Act 2003* accordingly removes the State Supply Commission's exemption from stamp duty on the transfer of property or any other relevant liability, in line with the principles of competitive neutrality. The provision is likely to have very little impact on the operations of Government because there are so few transactions that are of a size that will attract stamp duties. Where they do, the State Supply Commission will be required to pay State charges and taxes on behalf of the agency selling the asset. Part 13 was proclaimed on 20 April 2004.

3.1.4 Universities

The competitive neutrality review of Western Australia's universities' business operations was endorsed in February 2003.

The scope of the competitive neutrality review included matters, which were directly and indirectly related to competitive neutrality. Among other things, the review examined the degree of autonomy universities have in determining how they can use the vested land on which they run their operations. The review also considered restrictions on overseas investment and examined whether or not universities' legislation provides an appropriate basis for commercial activities to be carried out.

The competitive neutrality review identified the following competitive disadvantages to universities arising from Government ownership:

- public universities are subjected to costs associated with compliance and reporting under the *Financial Administration and Audit Act 1985* and Annual Reports to Parliament . Public universities are also subject to a wide range of social legislation dealing with matters such as Freedom of Information and Affirmative Action. Scrutiny and reporting of various university operations occurs at both the Commonwealth and State levels; and

- Western Australia's public universities are restricted from engaging in commercial activities that are not directly related to the objectives of the universities.

The review highlighted the differential treatment between universities, and in particular identified that Curtin University of Technology is the only public university in Western Australia that is allowed to undertake activities outside Australia.

The most contentious issue considered in the review was whether all university Acts should be changed to make it clear that universities can engage in purely commercial activities, which are not necessarily ancillary to, or directly facilitating education and research, but which further the objectives of the university.

The review recommended:

- where a university seeks to enter into a number of leases, the university Acts should allow for the concept of a Head Lease. That is, provision should apply within each Act so that the Governor's approval can be sought for a Head Lease and the university would have the flexibility to enter into subleases subject to the provisions and conditions of the Head Lease, thus obviating the necessity of all university subleases being required to be submitted for Governor's approval;

- the university Acts be amended to enable the Senate or Council to establish common funds into which smaller donations can be aggregated for investment purposes and to enable common funds to be invested as trust funds;

- no major change be made to individual university Acts in relation to existing exemptions from rates and taxes on vested property, on the understanding that where vested lands are being used for commercial or private purposes all university Acts have provisions for taxes and charges to apply, and that similar provisions should apply to all the universities in relation to exemption from rates and taxes in the university Acts;

- where university activities are predominantly commercial in nature, provided on a fee-for-service basis with direct outside competition, that universities should introduce full commercial pricing policies;

- an appropriate competitive neutrality complaints procedure be established which is rigorous and transparent with open reporting of findings, including some form of appeals process and involving the Department of Education Services (now the Department of Education and Training). The complaints handling mechanism, which will hold the universities accountable for introducing full commercial pricing policies, is necessary given the independent relationship between universities and government; and

- the university Acts be amended so that each university is clearly able to conduct commercial activities, by use of its property, both within and outside Western Australia and Australia, where the university's Senate or Council considers that the activities are most likely to promote the interest or objects of the university, its management or the conduct of its affairs or concerns.

The Government has established an inter-agency working group comprising representatives of the DTF and Department of Education and Training, to report to the Treasurer on the most appropriate way of mitigating the financial risks associated with allowing universities to engage in commercial transactions. These risks include the possibility of having to provide funding if a business venture makes substantial losses and loss of Commonwealth revenue. The working group will consider the risk mitigating measures that were introduced in New South Wales, which has recently passed legislation allowing its public universities to engage in commercial activities.

As a result of the review, legislation is being drafted to clarify the powers of universities to engage in commercial activities in Western Australia and outside of Western Australia, including activities that do not directly relate to the universities' core functions of education and research.

In the mean time, universities have become subject to competitive neutrality in Western Australia including the State's competitive neutrality complaints process. Universities have adopted guidelines on competitive neutrality.

There have been no competitive neutrality complaints since the adoption of competitive neutrality by Western Australian universities.

Amendments to the *Edith Cowan University Act 1984* which removed the unduly restrictive provisions in the University's investment powers were passed by the Parliament of Western Australia in the Spring Session of 2003 as part of the *Acts Amendment and Repeal (Competition Policy) Act 2003.*

Outstanding reforms arising from the competitive neutrality review will enhance the operations of the universities. However, they do not fall within the scope of clause 5(9) or clause 3 of the CPA. Western Australia has met its NCP obligations with respect to universities by:

- requiring that universities adopt competitive neutrality principles for their commercial operations;

- subjecting universities to Western Australia's complaints process; and

- passing legislative amendments arising from the legislation review.

3.1.5 TAFE Colleges

The activities of TAFE colleges are primarily focussed on the delivery of vocational education and training. In addition, TAFE colleges engage in other commercial activities in order to supplement government revenue sources, such as customised training for private enterprises, consultancy services, products, equipment and facilities hire.

The TAFE business activities have been categorised into the following groups:

- profile-funded training, which is provided by each college under a direct funding agreement (the college "profile"). This funding, which represents approximately 80% of total funding to vocational education and training, is not open to private providers;
- tendered activities, such as industry specific tendered programs, priority skills enhancement programs and adult migrant education services;
- off-the-job training for apprentices and trainees under the User Choice program, which allows employers, together with apprentices and trainees, to choose the training provider to deliver the off-the-job training required;
- fee for service activities, which include all activities involving full or substantial cost recovery and relate mainly to customer specific training and related services provided to companies and other organisations;
- ancillary services, which are provided mainly for the benefit of students to support the core training activities of the colleges (e.g. parking, bookshop, cafeteria, child care, etc.);
- business ventures, which include strategic alliances, joint ventures, R&D programs and live work related to the provision of vocational education and training; and
- departmental activities, which include WestOne, which provides a number of central services to the vocational education and training sector, and TAFE International, which coordinates the international activities of TAFE colleges.

On 23 June 2003, Cabinet endorsed the recommendations of the competitive neutrality review of TAFE colleges. Cabinet endorsed the Minister for Education and Training's findings that:

- competitive neutrality should not apply to profile funded training delivery, TAFE college 'live' work activities or the activities undertaken by WestOne and TAFE International;

- further action be undertaken to ensure that TAFE college ancillary services that are available to the general public are not provided at subsidised rates; and

- all other business activities of the TAFE colleges are already subject to competitive neutrality (either by being open to competition from private sector providers or priced based on full cost recovery).

The Government accepted the review's finding that, on balance, the costs of applying competitive neutrality in relation to profile-funded activity would outweigh the benefits for the following reasons:

- the transfer of market share from public to private training providers would mean that a greater proportion of students could have their learning disrupted in the event of a private training provider going out of business;

- private providers would not have the same commitment to community development, particularly in the regions, as do TAFE colleges;

- the additional costs associated with administration, monitoring and any arrangements which may be needed to provide access to unutilised TAFE colleges are expected to more than offset any cost reductions that arise from greater competitive pressures;

- the role of the Department as purchaser of training courses on behalf of students would be complicated were it to have to issue contracts to providers and the resulting lack of flexibility would be detrimental to the public interest; and

- there is a significant risk that some private training providers would not provide a quality service and the costs associated with mitigating this risk are excessive.

Overall, the review noted that the current model, which provides for managed competition in the provision of vocational education and training (that is comparable to the experience in other States), provides the balance between maintaining the government's investment in publicly funded TAFE colleges whilst providing sufficient funds to enable a thriving number of private sector providers.

Nevertheless, Cabinet endorsed the recommendation that further analysis be undertaken to determine the extent to which the level of competition could be increased in relation to profile funded training delivery.

3.1.6 Native and Plantation Forestry

Competitive neutrality reviews of native forestry activities, and of plantation forestry activities of the Forest Products Commission (FPC), have been completed by independent consultants and were considered by the Government in April 2004.

3.1.6.1 Plantation Forestry

The Government has endorsed the recommendations of the competitive neutrality review of plantation operations. The Government accepted that, although the review was completed prior to the establishment of the FPC, the establishment of the FPC addressed the major issues raised by the review.

The FPC is a participant in the markets for:

- plantation logs (the FPC dominates the supply of pine logs in Western Australia as it has marketing rights to approximately 85% of the plantation area);
- plantation management services to companies that have equity from overseas pulp and paper manufacturers (there are several private organisations that provide similar services); and
- tree seedlings and cuttings (the FPC operates a major nursery in Manjimup and there are several private nurseries producing similar products).

The review identified the main competitive neutrality issue as the pricing of pine logs, which are sold under long-term agreements and contracts. The review found that prices are low as a result of contracts being negotiated in a less than fully commercial environment.

At the time of the review, the competitive advantages enjoyed by the Department of Conservation and Land Management's Plantation Business Unit were significant. However commercialisation via the establishment of the FPC has addressed the major issues raised in the review: the FPC now pays local government rate equivalents, all state taxes, duties and charges, dividends in place of income tax, and pays a Government Guarantee Charge on borrowings.

3.1.6.2 Native Forestry

The Government has endorsed the recommendation of the Competitive Neutrality Review of Native Forest Operations to not remove any of the FPC's competitive advantages or disadvantages, as there would not be a significant impact on the FPC's pricing or on competition.

The review identified the following competitive advantages arising from government ownership:

- lower costs of fees to board members; and
- payment of lower dividends than is consistent with a representative rate of return for private companies.

The following competitive disadvantages were identified:

- costs of undertaking non-commercial activities, including research and development into timber processing and market development for timber products, investment;
- costs associated with higher superannuation liabilities;
- costs associated with servicing historical debt associated with non-commercial activities; and
- costs associated with government policy and reporting requirements.

Overall, the review identified a net competitive disadvantage to the FPC of $1.864 million.

The review reported that removing the net competitive disadvantage would have only small impacts on the prices of forest products, which would have a minor impact on prices and no material impact on the market for forest products.

It is worth noting that the review of native forest operations explicitly did not consider cost advantages arising from low rates of royalties or 'free' access to public land. The review considered that these cost advantages are associated with broader government policy and are not associated with the FPC's status as a public authority *per se*. As such the review did not consider that these matters were within the scope of the review.

The FPC has advised that it is compliant with Australian Accounting Standard 35, which requires that expected product prices are to be used for the valuation of self generating and regenerating assets held for profit.

The Government has noted that a higher standard of disclosure of timber prices assumed for valuation purposes is required, to be confident that the aims of competitive neutrality are being achieved and to ensure that the pricing methodology used for plantation and native timber operations is appropriate.

The FPC does not currently publish its contract prices or the methodology used to determine expected product prices. The Government will consider this issue before 30 June 2004.

3.1.6.3 The FPC's Profitability and Rate of Return

The FPC returned a profit after tax of $14.5 million for the financial year ended 30 June 2003. This equates to a return on equity of 5.71% as compared to the FPC's nominal after tax cost of capital of 9.91%. The forecast return on equity for 2003-04 and following three years is shown in the table below, with an average return on equity for the five year period of 2.79%.

	Financial year ended					
	2002/03	**2003/04**	**2004/05**	**2005/06**	**2006/07**	**Average**
	Actual ($000)	**Budget ($000)**	**Forward estimates ($000)**			
Profit after interest and tax	14,500	2,271	5,351	5,036	8,953	7,222
Equity	254,147	256,237	258,540	261,080	263,959	258,793
Return on equity	5.71%	0.89%	2.07%	1.93%	3.39%	2.79%

The major contributor to the return on equity being below the FPC's cost of capital is the FPC's focus on growing its plantation business, coupled with the effect of the WA Government's 'Protecting Our Old Growth Forests' policy and the recently announced Forest Management Plan.

It is worth noting that despite the above factors weighing against the FPC being able to make profits in line with its cost of capital, the FPC's return on equity is not out of line with other Australian state governments' forestry organisations. This can be seen from the following table which reports return on capital employed for the financial year ended 30 June 2003.

	WA	**Tas**	**NSW**	**SA**	**QLD**
Return on capital employed	5.71%	3.26%	0.57%	4.32%	2.89%

3.2 COMPETITIVE NEUTRALITY COMPLAINTS

3.2.1 Complaints Handling Process

Western Australia's 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 are then advised to lodge a complaint in writing to 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 carries out the investigation in accord with the State's policy statement on competitive neutrality and report its finding to the Expenditure Review Committee. The report would contain 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.

3.2.2 Complaints Received

3.2.2.1 Complaints About the Competitive Activities for Government Owned Businesses

3.2.2.1.1 Potato Marketing Corporation of Western Australia

Kable Export Pty. Ltd, an exporter of potatoes to Mauritius, in 2003-04 maintained its ongoing complaint that the Potato Marketing Corporation of Western Australia (PMC) has been significantly undercutting Kable's prices in the Mauritian export market. It is argued that the PMC is able to undercut prices in export markets due to its monopoly status over the Western Australian domestic market, the pooling arrangements for payments to growers under the Act, and a lack of transparent reporting by the PMC.

The competitive neutrality review of the PMC has not been completed, which is a prerequisite for complaints to be considered. However, the implementation of competitive neutrality for the PMC's export operations is a chief consideration of the Potatoes Implementation Advisory Group (PIAG), formed in September 2003. The PIAG's objective is to progress Government's decision to retain the *Marketing of Potatoes Act 1946* subject to proposed changes to the Act.

The advisory group's recommendations will be tabled in Parliament by 30 June 2004, and are being progressed jointly with the operational and effectiveness review required periodically under section 44 of the Act.

3.2.2.2 Complaints Against Agencies not Formally Required to Comply with Competitive Neutrality

3.2.2.2.1 Sir Charles Gairdner Hospital

Within Western Australia there is one private and one public radiotherapy service provider, with a highly competitive, rather than collaborative, approach between providers. It is well recognised that waiting times for the public provider are too long.

The private provider of radiation oncology services, Perth Radiation Oncology Centre (PROC) has complained that the pricing policy of Sir Charles Gairdner Hospital's (SCGH) radiation oncology service may be in breach of competitive neutrality principles. PROC has complained that SCGH is not charged a co-payment for the private patients they treat.

The view of the Department of Health is that a co-payment is against the basic principles of the public health services. Further, the Department is of the view that there is no 'market' for radiation oncology treatment since (a) it is not a discretionary treatment; (b) patients are not able to insure for the cost of private sector services; and (c) treatment is one part of a broader range of health services that need to be provided in an integrated package. It would be undesirable for components of the package to be "cherry picked" on the basis of profitability.

At the State and National level there are important initiatives underway in the area of radiation oncology that will impact on the delivery and funding mechanisms of these services. The Australian Health Ministers' Conference (AHMC) recently endorsed the final report of the Radiation Oncology Jurisdictional Implementation Group developed in response to the National Radiation Oncology Inquiry (Baume Inquiry). The Inquiry has shown that there are many problems in radiation therapy due to fragmentation between the different levels of government.

At the State level, a recommendation made in the recently released Report of the Health Reform Committee (Reid Report) to establish a State Centre for Cancer Care to integrate and coordinate delivery of cancer care across the State has been endorsed by the Government. This has important implications for how radiation oncology services will be organised within the State's health system.

In Western Australia, the operations of State owned hospitals are not subject to the principles of competitive neutrality. In light of AHMC's response to the Baume Report and the State Government's endorsement of the Reid Report, the Minister for Health will consider whether there is sufficient justification for a competitive neutrality review of radiation oncology services to be undertaken.

4 STRUCTURAL REFORM

Over the past year Western Australia has continued to progress energy reforms in accordance with its commitment to the CPA. The current reforms build on those of recent years and those undertaken in the early 1990s, preceding NCP, such as the separation of the State Energy Commission of Western Australia into Western Power and AlintaGas, and corporatisation of the Water Corporation.

The establishment of the independent Economic Regulation Authority (ERA), which commenced operation on 1 January 2004, marks a significant milestone in the implementation of NCP within Western Australia. A single independent regulatory body will further promote consistent regulatory outcomes across the key utilities industries, and be able to respond to changing regulatory needs. The Authority's independence will also remove any perception of outside interference in regulatory decisions, which can potentially stifle investment and competition.

On 8 April 2004 the *Electricity Industry Act 2004* was passed through Parliament, with amendments by the Legislative Council agreed to by the Legislative Assembly. The Act is now awaiting proclamation. The Act makes provisions for the development of a wholesale electricity market, an independent licensing regime, an electricity access code and consumer protection measures. Enactment of the legislation will provide greater opportunity for the development of competition in the generation and retail sectors of the electricity industry. Implementation of these provisions and the creation of a more competitive industry are key aspects of the Government's electricity reforms.

In addition to these developments Western Australia has continued to progress structural, market and regulatory reforms through a number of measures including the enhancement of third party access arrangements, and lowering retail contestability thresholds for both electricity and gas. With a view to fostering the State's investment and growth potential, the Government remains strongly committed to its obligations under the NCP.

4.1 ELECTRICITY

4.1.1 Background

Under the current industry structure the Government-owned corporatised business entity, Western Power Corporation, is the primary provider of electricity services in Western Australia. Electricity is distributed via two major interconnected transmission and distribution systems - the South West Interconnected System (SWIS) and the North West Interconnected System (NWIS) - and 28 isolated regional systems. Within the Corporation four specific purpose business units (generation, networks, retail and regional) provide services to the wider community. The remainder of the electricity industry is characterised by a number of private companies throughout the State that generate electricity primarily to supply their own mining, mineral processing or

other operations and in some instances public and private townships.

Despite not being able to participate in the national electricity market, Western Australia continues to take very seriously its need to reform the electricity industry and to introduce competition. Impediments to competition are being removed in the wholesale and retail sectors of the industry, access to the transmission and distribution systems is provided for in legislation, the number of contestable customers is being increased and private sector involvement in the industry is being promoted. The Government is committed to major structural, market and regulatory reform of the Western Australian electricity industry.

To promote greater competition and sustainable lower electricity prices, the Government established the Electricity Reform Task Force (ERTF) in August 2001 to develop a framework for further reform of the State's electricity supply industry. The ERTF's final report, submitted in October 2002, recommended the creation of a new electricity market that balances the need for greater competition, lower prices and consumer protection. Specifically, the report recommended:

- the creation of a wholesale market;
- a strong and independent regulatory system;
- the disaggregation of Western Power into four new entities; and
- the retention of the uniform tariff and existing rebates.

The Government endorsed the recommendations of the ERTF in November 2002.

The ERTF's review and proposed structural and regulatory reforms accord with Western Australia's obligations under Clause 4 of the CPA. In particular with regard to separating regulatory legislation for the electricity industry from Western Power's enabling legislation, separating the monopoly elements from potentially competitive elements of the industry, ensuring competitive neutrality is achieved and ensuring transparent funding arrangements for the delivery of community service obligations.

In January 2003 the Government established the Electricity Reform Implementation Steering Committee (ERISC) to implement the Government's electricity reform agenda. ERISC is chaired by the Coordinator of Energy and consists of representatives from relevant Government agencies.

4.1.2 Regulatory and Market Reform

The *Electricity Industry Act 2004*, which was passed on 8 April 2004, makes provisions for:

- establishing a wholesale market for the SWIS;
- establishing an independent licensing regime for electricity industry participants;
- establishing an Electricity Access Code to provide for third party access to electricity networks in Western Australia; and
- implementing measures to protect customers in a competitive electricity market.

4.1.2.1 Wholesale Market

The *Electricity Industry Act 2004* outlines the high level objectives of the wholesale market and provides a mechanism to establish wholesale market rules. The objectives of a wholesale market are to:

- promote the economically efficient, safe and reliable production and supply of electricity and electricity related services in the SWIS;
- encourage competition among generators and retailers in the SWIS, including by facilitating efficient entry of new competitors;
- avoid discrimination in that market against particular energy options and technologies, including sustainable energy options and technologies; and
- minimise the long-term cost of electricity supplied to consumers from the SWIS.

The wholesale market model is designed to promote greater competition and private sector investment in the SWIS. The model will extend the bilateral contracting system currently in place and make it operate more effectively by addressing issues that have inhibited the development of a competitive market in Western Australia.

In August 2003 the Electricity Reform Implementation Unit (ERIU) established the Market Rules Development Group (MRDG) and seven specific expert teams supporting ERISC, to assist it in developing the detailed design and drafting the market rules for the wholesale electricity market in the SWIS. The MRDG (chaired by the ERIU) and participating expert teams comprise more than 40 representatives across industry, Western Power and Government. The market rules are expected to be finalised by 1 July 2004.

Given that the market will take two years to implement the Government has introduced some transitional arrangements to assist Independent Power Producers (IPPs) to compete in the electricity wholesale market. A Top Up and Spill (TUAS) regime was implemented in April 2004. Under the TUAS regime an IPP whose capacity is less than the load it is required to serve would be able to 'top up' or purchase electricity from Western Power in order to meet its demand. Similarly, where an independent generator is producing more than its load to be served, it would be able to 'spill' or sell that excess production to Western Power. It is intended that the enhanced flexibility of the TUAS regime will lessen the risk exposure of IPP's considering market entry.

4.1.2.2 Industry Licensing Regime

Effective regulation of a competitive electricity industry requires the commercial licensing of market participants. The *Electricity Industry Act 2004* details the framework for the licensing of market participants involved in electricity generation, transmission, distribution and retail in Western Australia. The Act specifies procedures in relation to granting licences, including terms and conditions that may be imposed by the ERA, licence exemption conditions, licence amendment and transfer, enforcement and cancellation procedures.

Licensing will allow the State to identify operators, and to monitor and report their performance in relation to specific criteria for prudential and service standards. The licensing framework has been developed in full consultation with stakeholders, specifically the Electricity Industry Reference Group, Industry Legislation Reference Group, North West Interconnected System Project Group and the Electricity Reform Consumer Group.

4.1.2.3 Third Party Access

Open, transparent and non-discriminatory access to network services is a prerequisite to a competitive electricity market. The Government of Western Australia has a third party access regime in place for Western Power's electricity transmission and distribution systems. Open access has been made available to Western Power's transmission network since January 1997 and to its distribution network in a series of steps since July 1997. The *Electricity Corporation Act 1994* provides for the Minister for Energy to issue Access Orders that prescribe the manner and timing for the granting of access. Schedules 5 and 6 of the Act, and the *Electricity Transmission Regulations 1996* and the *Electricity Distribution Regulations 1997* provide the framework for access.

As part of the new market framework to be established under the *Electricity Industry Act 2004*, an Electricity Access Code providing for open access to network assets is currently being developed to suit conditions prevailing in Western Australia. It is currently proposed that the electricity network facilities to be initially covered by the Electricity Access Code will be those that form part of Western Power's networks in the SWIS, and any other transmission and/or

distribution facilities that meet specified coverage criteria, ERIU is undertaking public consultation on the draft access Code.

The Electricity Access Code is to incorporate the use of incentive regulation, including the use of price and/or revenue caps and, where efficient and practicable, cost reflective network pricing. Where appropriate, it will also be consistent with the National Electricity Code and National Gas Code and ultimately be designed to meet the requirements for certification under the Part IIIA of the *Trade Practices Act 1974*. As part of the development process, the Government of Western Australia will submit the Access Code to the NCC for certification. It is anticipated that the Electricity Access Code will be operational by 1 July 2004.

Access arrangements will set out the terms and conditions for standard access services and will be approved and monitored by the ERA. Administration of the Electricity Access Code by the ERA will for the first time see network access terms and conditions independently assessed, consistent with the obligations under Clause 6 of the CPA.

4.1.2.4 Retail Contestability and Consumer Protection

Retail contestability thresholds for electricity are being progressively lowered. In July 2001 the threshold was lowered from an average load of at least 1,000 kW (or 8,760 MWh per annum) to an average load of 230 kW (or 2,000 MWh per annum) at a single site. On 1 January 2003, contestability was extended to customers using an average load of at least 34 kW (or 300 MWh per annum). This represented an increase in the number of contestable customers from 450 to around 2,500, meaning that contestability extended to approximately 50 per cent of Western Power's total sales.

The Government initially had a target of introducing full retail contestability (FRC) in 2005. However, noting that FRC requires effective competition at all levels of the industry and at the generation and wholesale market levels in particular, the ERTF recommended the delay of FRC because the prerequisites for facilitating FRC would not all be in place by this time. To maintain the momentum of reform however, the ERTF proposed that the threshold for contestability be reduced to 5.7 kW average load (50 MWh per annum) on 1 January 2005. This extension of access to Western Power's electricity networks will increase the number of contestable customers to around 12,500. This level of consumption is typical of small businesses such as corner shops and will result in approximately 60 per cent of Western Power's current load in the SWIS being contestable. Competition in the retail market will ensure the benefits of efficiency gains in generation are passed through directly to consumers.

The cost of processes and systems necessary to accommodate this interim step will be lower than the costs of FRC because of the smaller number of contestable customers. Following the successful implementation of the aforementioned

reform, the need will arise for a detailed analysis of the cost of processes and systems necessary to accommodate FRC versus the benefits of securing upstream efficiency gains for end consumers.

Consumer protection for residential and small business customers will be addressed by a number of measures, including:

- the implementation of a Customer Service Code;
- obligations on retailers to have a standard contract with associated standard tariff at or below the uniform tariff cap which is available to any existing or new tariff customer;
- obligations on network service providers to publish an approved consumer connection and extension policy detailing the technical and economic conditions for connection of customers;
- implementation of an Energy Ombudsman scheme providing consumers with a complaint resolution mechanism; and
- a retailer of last resort obligation on Western Power Corporation to ensure that supply is available to customers whose retailer exits the market.

4.1.3 Structural Reform

The ERTF also recommended that Western Power's activities in the SWIS be vertically disaggregated into three independent entities - State Generation, State Networks and State Retail - and the establishment of a fourth entity, the Regional Power Corporation, with responsibility for electricity supply in the NWIS and Western Power's non interconnected systems.

The Electricity Corporation Bill 2003, required to implement the disaggregation of Western Power, was introduced to the Legislative Assembly in October 2003. The Bill progressed to a second reading in the Legislative Council before being withdrawn, as publicised opposition made it evident that the Bill would not pass a third reading. However, the Government is still strongly committed to the disaggregation of Western Power Corporation and intends to reintroduce the disaggregation legislation after the next election. In the interim, Government is considering the most effective measures to mitigate Western Power's vertical and horizontal market power.

4.1.3.1 Implementation Timetable and Public Consultation

The Government has committed to an ambitious timetable for implementing the proposed structural, market and regulatory reforms. The key milestones that the Government has identified include:

- the development of the Western Australian Electricity Access Code by 1 July 2004;
- the reduction in the contestability threshold to 5.7kW on 1 January 2005; and
- the implementation of the new wholesale electricity market by 1 July 2006, which is consistent with the recommendations of the ERTF.

The Government's work program continues to include extensive stakeholder consultation and participation. For example:

- expert teams have been established to consider a range of reform initiatives;
- an Electricity Reform Consumer Forum has been established to ensure consumer representatives have the opportunity to provide input and the public is well informed regarding the proposed changes;
- an Industry Reference Group has been established to provide a sounding board for industry with respect to electricity reform implementation issues; and
- a Union Consultation Committee has commenced operations to advise Western Power on employee and structural change issues.

ERIU has also hosted workshops on specific electricity reform matters such as regional issues, wholesale market implementation, the electricity access code, the licensing regime, customer protections, transitional arrangements and sustainable energy initiatives.

4.2 GAS

4.2.1 Background

Since 1995, 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 and compulsory third-party access to the transmission and distribution networks;
- separation and corporatisation of the former State-owned gas and electricity utilities; and
- structural separation of the gas transmission and distribution functions, and the subsequent privatisation of transmission and distribution/retail activities of the formerly Government owned corporation, AlintaGas.

Other major commitments in implementing free and fair trade in gas relate to the implementation of a nationally consistent regime for access to gas pipelines and the move towards FRC. The Government is committed to the development of a competitive gas market in Western Australia. Further to this the Government is currently participating in the national review of the gas access regime being conducted by the Productivity Commission.

4.2.2 Retail Contestability

Allowing customers to choose their preferred gas retailer is an outcome of the Government's energy industry reform process, and will meet Western Australia's obligations under the CPA and the agreed COAG National Energy Policy. The *Gas Pipelines Access (Western Australia) Act 1998* sets out Western Australia's timetable for access to the AlintaGas distribution system.

The phased implementation of gas contestability is an ongoing process in the Western Australian gas market. On 1 January 2002 the market became contestable for those customers consuming 1TJ or more of natural gas per annum, such as hospitals, hotels, restaurants, laundries and bakeries.

The last stage of legal contestability occurred on 1 July 2002, when legal impediments to access for over 440,000 small business and household customers consuming less than 1TJ per annum were removed. However, contestability has been delayed due to the longer than anticipated time required for putting in place the necessary rules, systems and regulatory framework to support a fully contestable gas market. FRC will commence in May 2004.

The Minister for Energy established in July 2001 the Gas Retail Deregulation Project Steering Group (GRDPSG) to consider issues necessary to facilitate FRC. The GRDPSG has been responsible for facilitating the development of agreement on the systems, rules, codes and other specific arrangements necessary to support FRC and the processes and mechanisms by which they will be implemented. Membership of the GRDPSG comprises gas industry participants, Government representatives and consumer interests, and is supported by a series of technical working parties

In accordance with its Terms of Reference, the GRDPSG has specifically addressed the following matters in relation to the move towards a fully contestable gas retail market:

- determination of a market operator to manage systems, rules and provide services in order for the retail market to operate;

- systems, rules, services and specific arrangements to manage customer transfers between retailers and for the determination and allocation to retailers of gas deliveries to consumers, balancing of gas supplies and deliveries and settlement of accounts;

- consumer protection and education, including the need for and establishment of an Energy Ombudsman;
- emergency gas supply management and procedures;
- back-up retailer arrangements (retailer of last resort) and marketing code of conduct;
- operational issues related to differing ownership of gas distribution systems; and
- pursuing consistency with other jurisdictions, where appropriate.

A number of key milestones have been achieved in the progress towards practical FRC. These include:

- expanding the project to include South Australia. In recognition of the benefits of a coordinated approach to the introduction of FRC, market participants and Governments of South Australia and Western Australia have agreed to work together on a joint project;
- registering the Retail Energy Market Company (REMCo) with the Australian Securities and Investments Commission (ASIC) on 8 January 2003. REMCo is responsible for the administration of the Retail Market Rules that will support FRC in the Western Australian and South Australian gas retail markets, and for contracting of IT systems and services required to implement these rules;
- the development of a constitution for REMCo and the selection of Directors and a Chief Executive Officer;
- development of the Retail Market Rules;
- finalisation of a consultant's report on load profiling solution. The key findings of this study include the following recommendations:
  - net system load profiling should be adopted at a network level;
  - forward reconciliations with payback of reconciliation amounts over a short period of time;
  - global settlements are to occur; and
  - interval meters are to be mandatory for all consumers using more than 10TJ of gas per year; and
  - development of legislative provisions for the implementation of FRC.

4.2.3 Access

A legal right of access to gas transmission and distribution systems has been created by the *Gas Pipelines Access (Western Australia) Act 1998*, which implemented the National Third Party Access Code for Natural Gas Pipeline Systems. The covered pipelines include the major gas transmission pipelines and the gas distribution system in Western Australia. Having established an independent regulatory authority in 1999, and with the gas access regime certified as effective under the *Trade Practices Act 1974* in May 2000, Western Australia continues to benefit from the enhanced competition and efficiencies that effective access regulation brings.

Access to gas pipelines was previously regulated by the Western Australian Gas Pipeline Access Regulator who was supported by the Office of Gas Access Regulation (*Off*GAR). With the transfer of the Regulator's functions to the ERA, *Off*GAR was abolished and its functions were subsumed by the ERA as of 1 June 2004. Prior to this event the Gas Pipeline Access Regulator issued a further final decision on the Bunbury to Dampier Natural Gas Pipeline access arrangement. Final decisions were also previously issued on the ring fencing arrangements for the Tubridgi Pipeline System, the Parmelia Pipeline (which is no longer covered) and the Associate Haulage Contract between AlintaGas Networks Pty Ltd and AlintaGas Sales Pty Ltd.

Following the transfer of regulatory functions, owners of covered pipelines are now required to lodge access arrangements with the ERA within prescribed time limits. A number of proposed access arrangements for pipelines covered by the Code have been lodged with the ERA for approval. As was the case with OffGAR the ERA will review each proposal and conduct a public submission process to make an informed decision whether to approve or request amendments to the proposed access arrangement.

A significant issue currently under consideration by the ERA is the access arrangement for the Goldfields Gas Pipeline. The Draft Decision for the Goldfields Gas Transmission Pipeline is being amended following this party's withdrawal from Supreme Court action. The NCC will be aware of the recent application for revocation of coverage of the Goldfields Gas Transmission Pipeline under the *Gas Pipelines Access (Western Australia) Act 1998*.

In order to consider the effectiveness of the operations of the Western Australia's independent gas pipeline access Regulator, the Western Australian Gas Review Board, and the Western Australian Gas Disputes Arbitrator, the *Gas Pipelines Access (Western Australia) Act 1998* has been scheduled for review. This review, which was due to commence after the Dampier to Bunbury Natural Gas Pipeline access arrangement was finalised, has been deferred pending the outcome of the Productivity Commission's review of the National Gas Access Regime. The Western Australian Government is an active participant in the national review, and has a strong interest in facilitating any desirable improvements to the

operation of the National Gas Access Regime, including in regard to efficient investment, transparency, and reducing the costs associated with regulation.

4.2.4 Regulation

The Coordinator of Energy assists the Minister for Energy in planning and coordinating energy supply in Western Australia. In regard to the regulation of prices, the *Energy Coordination (Gas Tariffs) Regulations 2000* provide for the regulation of gas retail tariffs. The Office of Energy previously managed the issuing of gas distribution and retail trading licences, however responsibility for this function now rests with the ERA. The transfer of licensing functions, which took place on 19 March 2004, ensures the independence of the regulatory body administering the licensing regime.

4.3 RAIL

The Western Australian Government is committed to creating an environment favourable to competition within the rail sector. Western Australia has established a rail access regime designed to provide a framework for the negotiation of access to rail services provided by the State's rail network.

The Rail Access Regime, which comprises the *Railways (Access) Act 1998* (the Act) and the *Railways (Access) Code 2000* (the Code), became fully operative with the proclamation of the Act on 1 September 2001. The appointment of the acting Rail Access Regulator coincided with the proclamation of the Act. The acting nature of the position reflected the planned creation of the ERA.

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. 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.

As part of the State's application to the NCC to certify the Western Australian Rail Access Regime for rail services, the Code was developed through two national public consultation processes as part of the NCC's assessment. These consultation processes raised many issues concerning the detailed content of the Code, and the Code underwent significant amendments to address the concerns raised. There is now broad agreement among the parties within Western Australia on the Code.

Although the NCC agrees that under Part IIIA of the *Trade Practices Act 1974* Western Australian largely meets the requirements of an effective rail access regime, the State withdrew its application for certification in October 2000. This action was motivated by the fact that according to the NCC a barrier to certification remained due to an issue regarding nationally consistent access arrangements for interstate operators.

In 2003 the Regulator issued final determinations on segregation arrangements (including ring-fencing) for the Western Australian Government Railways Commission (WAGR) and WestNet Rail, costing principles and over-payment rules, train management guidelines, train path policy and final determinations for the rail freight network and the urban passenger rail network.

The Western Australian Government continues to refine the Code to improve its effectiveness and efficiency. A full review of the Rail Access Regime will commence in the second half of 2004.

4.4 ECONOMIC REGULATION

The *Economic Regulation Authority Act 2003* was assented by Parliament on 5 December 2003. This provided the legal basis for establishing the independent ERA with functions across the gas, rail, water and electricity industries. Like the previous Gas Access and Rail Access Regulators, the ERA is an independent, specialist regulatory body with technical expertise and a clear regulatory mandate. The design of the ERA has focussed on best practice regulatory principles and is consistent with the Government's vision of competitive utilities markets. The Government remains responsible for the laws administered by the ERA.

The ERA commenced operations on 1 January 2004, assuming responsibility for economic regulatory functions previously performed by a variety of sector specific regulators and public sector officials. This is aimed at reducing duplication of fixed and operational costs and consolidates scarce regulatory expertise.

Establishment of a multi-industry economic regulator was a central feature of the Government's pre-election electricity reform policy statement and was a significant recommendation of the Machinery of Government Task Force report. A single independent regulatory body will promote consistent regulatory outcomes across the key utilities industries, and be able to respond to changing regulatory needs. The ERA's independence will also remove any perception of outside interference in regulatory decisions, which can potentially stifle investment and competition.

Functions of the ERA include:

- independently regulating access to significant economic infrastructure under industry-specific access regimes. Responsibility for the existing gas and rail access regimes has already been assumed by the ERA. Responsibility for the future electricity access regime is subject to implementation of the Western Australian electricity access code, which is expected to occur in July 2004;

- independently granting industrial licences and ensuring compliance with terms and conditions applying to licences:

- water industry licensing functions were transferred to the ERA effective from 1 January 2004;
- gas industry licensing functions were transferred on 19 March 2004, in preparation for the implementation of FRC in May 2004;
- electricity industry licensing functions will be carried out by the ERA following the development of the regime as part of the current electricity reform process; and

- making expert recommendations to Government about tariffs and charges for Government monopoly services, and any other matters requested by the Government.

5 RELATED REFORMS

Western Australia is committed to the agreement to implement related reforms in the areas of water and road transport and has substantially met its reform obligations. Note that Western Australia's progress in implementing reforms to its gas and electricity industries are discussed in the section entitled Structural Reform.

5.1 WATER

5.1.1 Water and Wastewater Pricing

5.1.1.1 Rural Water Services

In line with the CoAG requirements for the devolution of irrigation scheme management, the Western Australian Government, through the Water Corporation, has transferred each of its irrigation schemes to local grower cooperatives.

The Water Corporation however still remains the supplier of bulk water to each of the growers' cooperatives.

The Water Corporation has rural bulk water supply agreements in place for:

- South West Irrigation Management Co-operative (now Harvey Water) (commenced 1996/97);
- Preston Valley Irrigation Co-operative (commenced 1998/99);
- Ord Irrigation Co-operative (commenced 2002/03); and
- Gascoyne Water Co-operative (commenced 2003/04).

These agreements were set up as part of the handover of irrigation schemes to co-operatives of local growers. Under these agreements, the irrigation co-operatives pay a bulk water charge based on a renewals annuity charge, plus on-going operation and maintenance costs in line with the CoAG water pricing agreements.

The bulk water charge is applied through a bulk water supply agreement (BWSA) between the Water Corporation and the irrigation cooperatives. The South West BWSA is due for renewal in 2006/07 at which time there will be a review of the pricing arrangements. The other BWSAs are in place for periods of 10 to 15 years so there will not be a review of those pricing arrangements for some time.

The Water Corporation receives Community Service Obligation payments for each irrigation scheme for the difference between full cost recovery (that is, depreciation, a return on assets, and operating and maintenance costs) and the bulk water charges. This arrangement ensures the transparency of payments.

Also, the Ord and Carnarvon Irrigation Co-operatives each receive an operating subsidy to allow the grower's cooperatives to establish themselves as a stable going concern during their first years of operation.

As a condition of receiving the subsidies the co-operatives are obligated to phase-in higher charges as the subsidies are reduced. The Ord Irrigation Co-operative is phasing in increased charges to growers over ten years and will cease receiving operating subsidies in 2012/13. The Carnarvon Irrigation Co-operative is phasing in increased charges to growers over fifteen years and will cease receiving operating subsidies in 2018/19. South West Irrigation Management Co-operative and Preston Valley Irrigation Co-operative have fully phased in charges to growers and no longer receive operating subsidies.

The operating subsidies are approved by Cabinet at the time of privatisation of the irrigation schemes and fixed over a set period. The operating subsidies are reported each year in the Annual Report of the respective irrigation cooperatives.

5.1.1.2 Licence Fees

The Water and Rivers Commission (WRC) conducted a rigorous investigation into the possibility of introducing a two-stage approach to licence fees. Firstly, fees would be introduced to cover administrative costs, and then secondly, the development and introduction of a full costing model would follow thereafter.

After extensive consultation with stakeholders and development of a possible administration fee arrangement last year Government decided not to introduce licence fees and instead review the level of activity and funding strategies for water licensing and compliance functions.

Western Australia is not prepared to introduce licence fees and is doing this with the belief that the CPA does not require cost recovery for water resource management. Rather, it requires that costs are made transparent. To this end, WRC budgets are published in the Annual Report, which is considered to comply with our obligations.

5.1.1.3 Urban Water and Wastewater Sector

To address the payment suspension for lack of transparency in water pricing Western Australia established a working group (with representatives from the DTF and the Office of Water Policy (OWP)) to investigate ways to best address the issue. Subsequently the working group developed terms of reference for a pricing inquiry to be undertaken by the Economic Regulation Authority (ERA) (a copy of the draft terms of reference is at Attachment 2). The terms of reference require the ERA to:

- investigate and report on the appropriate charging structure and recommended tariff levels for the Water Corporation's urban water supply and wastewater services and the Bunbury and Busselton Water Board's urban water supply services;
- take account of CoAG pricing principles (outlined in an Appendix to the reference) and government policy objectives (such as community service obligations and uniform pricing policy);
- undertake consultation with industry, government and other stakeholder groups on the basis of an issues paper; and
- release a draft report by 18 March 2005, and a final report by 12 August 2005 so that any recommendations adopted by Government to be implemented in 2006/07 by the service providers.

The inquiry process will provide an avenue for consumers to input to the pricing process and the report will be a valuable source of information to the Government in setting water prices. A number of important areas of interest to consumers will be investigated by the ERA as part of the reference, including consideration of:

- the efficient cost of providing water and wastewater services;
- the standards of service that apply, including standards of quality, reliability and safety;
- the need to encourage investment in the water industry;
- water supply demand management and the protection and development of future water sources;
- ecologically sustainable development; and
- the social impact of the recommended tariffs and charges.

5.1.1.3.1 Sewerage and Drainage Services

As indicated in the State's submission to the 2003 Assessment, a working group was established to examine alternatives to the remaining valuation based charges for residential sewerage, country commercial sewerage and metropolitan drainage.

The Joint Working Party was established with representatives from the Minister for Government Enterprises (the Shareholder Minister), the Minister for the Environment and Heritage (the Industry Minister), the Department of the Premier and Cabinet, the DTF, the former Office of Water Regulation, the Water and Rivers Commission (WRC) and the Water Corporation.

Of the recommendations of the Joint Working Party, the Government decided to:

- replace country commercial sewerage charges with the metropolitan commercial charges, comprising a two-part major fixture and volumetric tariff; and

- maintain the existing valuation based charges for residential sewerage, subject to the Water Corporation publishing information of the distribution of sewerage charges in its Annual Report.

The decision to retain valuation based charges for residential sewerage is due primarily to the redistributional impacts of the reform. For example, analysis found that some customers from lower income groups would experience increases in their sewerage charges by more than 100%. Mechanisms to mitigate the impact of the changes on these customers were examined but none could be practically implemented. As a result, it was decided that until those redistributional impacts could be better addressed, the status quo would be maintained.

Therefore, in accordance with the COAG Water Reform Agreement, item 3(a)(i), the remaining cross subsidies are now transparently reported on the Water Corporation's website:

www.watercorporation.com.au/accounts/Accounts_Rates_Metro_Res.cfm <http://www.watercorporation.com.au/accounts/Accounts_Rates_Metro_Res.cfm>

A copy of the graph is provided at Attachment 2.

5.1.2 Water Management

5.1.2.1 Establishment of Water Rights Systems

5.1.2.1.1 Water Management Planning

Western Australia continues to progress implementation of water allocations for the environment in accordance with ARMCANZ/ANZECC National Principles for the Provision of Water for Ecosystems.

Following the release of the Auditor General's report "Managing Western Australia's Water Resources" to Parliament in 2003, the WRC has reviewed the way planning activities in the State are prioritised.

The table at Attachment 2 outlines the current water allocation plans and has been updated according to these revised priorities, which is according to current and future risks to the water systems.

Despite the amended priorities, no plans have been removed that were previously committed to. However there have been a number of new plans undertaken in response to the amended priorities.

5.1.2.1.2 Allocation Limit Review

The WRC have been progressively reviewing the allocation limits for all systems to ensure that limits are based on the most up to date information, and account for appropriate environmental water provisions.

The Office of Auditor General review identified that the WRC had not determined allocation limits for a significant number of water resources, and that where they had been determined, these had not always been updated on the database. As a result, the database was indicating that licensed allocation was exceeding the currently stored Allocation Limit in parts of 13 of the State's groundwater management areas.

The WRC has also instigated a program to determine allocation limits, by June 2004, for those groundwater resources which do not have a limit set, and to review allocation limits for those resources where updated information indicates that the licensed allocation is exceeding the current limit.

5.1.2.1.3 Progress with Conversion of Existing Water Allocation to New Entitlement Systems

Implementation of new entitlements systems was accomplished by changes to statutory provisions governing the issue of licences to take water and establishing water co-operatives with tradable shareholdings that define entitlements. Licences issued under the *Rights in Water and Irrigation Act 1914* (the RIWI Act), are now tradable and registered.

5.1.2.1.4 Register of Licences and Entitlements

The WRC maintains a register of licences and entitlements as required by the RIWI Act Section 26GZI. The entitlement holder is able to register third party interests, including the interests of financial institutions. The internet register is built and accesses information held on the Water Resources Licensing database (WRL), but will not go online to be made public until the data cleansing project looking at the Divertible Water Allocation Inventory Database (DWAID) and WRL has been completed. The data-cleansing project has a full-time officer working on it who estimates it will be completed in July 2004. However, the information held on the register is available by contacting the WRC and the information once it has been checked.

5.1.2.1.5 The Water and Rivers Commission's Final Policy Guidelines on the Management of Unused Licensed Water Entitlements

In November 2003 the WRC finalised policy guidelines on the management of unused licensed water entitlements (Statewide Policy No 11). The policy applies to all licences to take water granted under the RIWI Act. However the policy does not apply to:

- water entitlements that have been purchased (traded); or
- unused water entitlements that are a result of investment in water use efficiency.

This means that entitlements that have been purchased are not recovered under this policy.

Before a licence is granted, the WRC will consider, among other criteria, the applicant's ability to undertake the proposed development and utilise the water entitlement within a reasonable and agreed timeframe. For new developments and extensions to existing developments licences are granted with a condition that requires the licensee to implement the development and utilise all the water entitlement within a prescribed timeframe.

The WRC is also responsible for ensuring the State's water resources are used effectively and efficiently for the State's development and the community's benefit. From time to time the WRC audits licences to identify any breaches in their conditions, including any differences between the licensed water entitlement and the actual volume of water used.

Where the WRC establishes that part or all of the water entitlement is consistently not being used, it will discuss with the licensee their actual short and long-term water requirements. Where the licensee cannot establish, to the satisfaction of the WRC, a continuing requirement for all the entitlement, action may be taken to recoup the water entitlement not being utilised.

This ensures equity among existing and potential water users and reduces the possibility of a licensee holding on to a water entitlement where they cannot demonstrate a need to retain the entitlement and use the water.

The intent of this policy is to ensure that the water resources allocated are used effectively by:

- reducing unused licensed water entitlements to a minimum;
- ensuring that licensed water entitlements are fully utilised for the benefit of the licence holder, the community and the State;
- reducing speculation in the granting of water allocations; and
- ensuring that decisions on managing, and in some circumstances recouping, unused licensed water entitlements are fair and equitable.

5.1.2.1.6 The Outcome of the WRC's Review of the use of its unused allocations

The only unused allocation in Western Australia is that set aside for public drinking water. In December 2003, the WRC prepared a Situation Statement which provided a concise outline of the proposed future public drinking water supply (PDWS) for the State based on population growth and groundwater demand predictions for 2016 and 2031. It dealt primarily with the provision of PDWS with a focus on high quality groundwater sources and included some of the hydro-geological constraints in reserving water for the future. The paper contains the methodology used in quantifying the reservations for each population centre and both combines and separates the Perth metropolitan area with country WA. In addition, the paper made a number of recommendations to address the knowledge gaps. It is intended to provide the background to develop the basis for water supply planning at least for the next three decades.

Western Australia is still developing its groundwater resources and is in the fortunate position of being able to reserve groundwater supplies for future use and the continuing social and economic development of the State whilst maintaining significant ecological values associated with groundwater.

The WRC places a high priority on the availability and protection of groundwater resources suitable for use in PDWS schemes. PDWS resources are highly valued by communities across WA, as their availability ensures the continuing development of the State's population centres. However, Western Australia's water resources are limited and in some areas, usage is approaching or has reached the sustainable yield of that resource. In addition, the water that is available is of varying quality, not always suitable for potable use in its natural state and not always in close proximity to the demand centre. Fresh water resources however, need to be protected from potential sources of contamination if their beneficial values are to be maintained into the future.

Increasing population growth and associated economic and social activity is increasing the demand for PDWSs. If the current dry climatic regime continues as predicted, additional pressure will be placed on groundwater resources particularly in the south of the State. To address these issues the Commission places a high priority on the availability of water for use in public and private drinking water supply schemes, and water of perhaps, lower quality, for major projects that will be of economic benefit to the State. The Commission therefore, reserves groundwater for future PDWSs that includes fresh water for human use and in some instances water for industrial use under State Agreement Acts. The Commission does not reserve groundwater for any other purpose.

Reserving groundwater for future use, which may be tens of years away, is not without its challenges. The impacts of current land and water use on future PDWS reservations must be well managed to ensure that future supplies are not compromised in their quantity and quality. The fact the locations of future wellfields cannot be easily determined only adds to the challenge.

The Commission also prepared a Discussion Paper entitled '*Reserving and protecting water resources for future use in Western Australia*' which is intended to lead to a Policy Position on the reservation and protection of water resources for future use in WA. This Discussion Paper was released for public comment in May 2003 and can be accessed at:

http://www.wrc.wa.gov.au/using/Policy_Plans/discussion%20paper_reserving%20water.pdf

5.1.2.1.7 Directions

The WRC has powers under Section 26GL of the RIWI Act, to issue a direction overriding other rights established by the Act. The only direction issued to date requires the Water Corporation to temporarily reduce draw on some wells in Perth PDWS wellfields where unacceptable environmental impacts would otherwise occur. Reductions, in this case, have been compensated by issuing fixed term non-renewable licences allowing an increase in draw from other sources.

5.1.2.2 Provision of water to the environment

5.1.2.2.1 Implementing water management and allocation arrangements for river and groundwater sources

The implementation program is tied to the management planning program as the mechanism for providing water for the environment. Details of commitments in this area are described under the heading of 'water management planning' in the section of establishing water rights systems.

Water management plans (as indicated above) are developed in accordance with the COAG/ARMCANZ/ANZECC national principles, which include, assessments of the allocation limits, environmental water requirements and provisions, trading (where applicable), introduction of metering of use and user pays principles where appropriate. The environmental water provisions, for most plans, will be interim and conservative due to the generally low level of information available. It is expected that monitoring over time will provide additional information to allow a higher level of environmental water plans (EWPs) to be established.

A multi-criteria analysis matrix has been developed to assess the impacts of pumping scenarios on the identified ecological, social/cultural and economic values. The risks to the environment are identified during the EWP (matrix) process. Licence conditions are used to minimise the identified risks.

Once developed, the draft matrix is released for public comment from a wide range of stakeholders and community groups, particularly Water Resource Management Committees where established. Any socio-economic trade offs required to maintain ecological values are generally negotiated with the stakeholder groups and the community during the final planning stages.

The Matrix process is currently being tested in the Blackwood Groundwater Area. The series of documents released for public comment can be accessed at:

www.wrc.wa.gov.au/whicher.blackwood.htm.

The Local Area Management Plan for Carnarvon and the current version of the Draft Blackwood Plan will be sent separately as supporting documentation to this submission.

5.1.3 Water Trading

5.1.3.1 Consistency of water entitlement arrangements with CoAG obligations

In the 2001 NCP assessment of the RIWI Act and RIWI amendment bill it was concluded that satisfying public demand for restrictions on licence holders was justified on political grounds. That is, that the requirement for a licensee to have legal access to the land was necessary to gain political support for the passage of the legislation through parliament during 2000.

For the 2004 assessment, the Council has asked that Western Australia either remove the restrictions or demonstrate that they provide a net public benefit, including that they do not unjustifiably restrict the entry and behaviour of market participants (such as agents and brokers whose activities may facilitate trade in water entitlements) or the ability of financial institutions to obtain control of water entitlements in the event of default.

Trading markets are relatively undeveloped and immature in Western Australia. The requirement for a license holder to have legal access to land was seen as a reasonable interim step to allow the community to become comfortable with the idea of trading and water markets.

It should be noted that the CoAG agreement required the reforms to be implemented in consultation with water users. Western Australia sees as reasonable that this position would be reviewed after five years from the date of implementation as required under Section 27C of the RIWI Act.

Western Australia believes that the current requirement that licence holders in general be the occupier on the land where the licensed activity applies is not causing market distortion. Most constraints can be readily overcome. For example, a person wanting to sell a licence on a leaseback arrangement need only grant the licence holder occupancy rights for the land as part of the contract.

Similarly, financial institutions seeking to hold security over the licence should take an interest in the land that would allow them to take control of the licence in their own name if the licence holder defaults.

It should also be noted that bylaws can be made to broaden the scope of people able to hold a licence. For example, if there was a demand from lenders, bylaws could be drafted to allow people holding security interests to take possession of the licence.

In Western Australia it is important to require water entitlements granted to new projects are developed as proposed so that water is allocated where there is a genuine need to use the water. There is a risk that without the link between ability to use water and eligibility to hold a licence, we would be obliged to grant entitlements to people seeking only to be granted entitlements for sale and lease. Western Australia does not consider this is an acceptable basis for the grant of new entitlements.

Western Australia is also concerned to foster stewardship of water resources. Rights held within local communities are more likely to be exercised in a way that is sympathetic to the impacts of the use.

Western Australia will use the National Water Initiative development and its consultation processes to promote understanding of the benefits of trading in Western Australia. The State Irrigation Review underway currently is also addressing this issue.

5.1.3.2 Transferable (Tradeable) Water Entitlements for Western Australia

The RIWI Act was amended in 2001 to allow trading in water entitlements. The amended Act contains provisions that may constrain trade in water entitlements, including:

- scope for local by-laws to amend local trading practices; and
- a requirement that a licence holder must be an owner or occupier of land or have access to land (discussed in section on water entitlements above).

Western Australia has policy guidelines for water trading and an interim sub-policy to guide the operational management of trading. These are set out in Statewide Policy No. 6: Transferable (Tradable) Water Entitlements for WA which is located at:

http://www.wrc.wa.gov.au/using/Policy_Plans/TransferableWaterEntitlementsPolicy.pdf

Statewide Policy No. 6 incorporates all the rules associated with trading. The policy is publicly available and before it was finalised an extensive public consultation was undertaken. The policy forms the basis of water trading in the State and the basis of trading rules in water management plans. Subregional and local area water management plans may include trading rules. The trading rules in the plans are required to be compatible with the statewide guidelines or to address potential conflicts or limitations on the implementation of the guidelines.

The RIWI Act requires the WRC to assess any potential environmental, social, cultural, hydrological and hydro-geological impacts associated with each trade. Each trade is assessed to determine any adverse environmental impacts resulting from the trade. The aim is to have mechanisms in place to avoid adverse environmental impacts from trade on river and groundwater health. The Commission can refuse a trade if the physical, social and ecological impacts are determined to be significant. Generally, there are no restrictions on trades other than restrictions to avoid adverse environmental impacts. If the impacts are considered to be significant the Commission can refuse the trade.

The Statewide Policy No 6 indicates that the Commission may refuse trades to prevent monopolies in water. This raises the question of the nature of any competition test applied in reaching a decision to refuse approval for a trade, given the powers in the *Trade Practices Act 1974* would negate the need for the Commission to be involved in this process. While this wording is a result of the consultative process undertaken during the formulation of the policy, the reference to 'monopolies' must be taken out of the policy as there is no statutory power for the Commission to refuse an application for trade for this reason. This also necessitates changes to other policies completed since Statewide Policy No 6 was implemented that have been worded to be consistent (for example Statewide Policy No 11). These amendments will be implemented by December 2004.

5.1.3.3 Local Trading Rules

Any local trading rules must also be consistent with Statewide Policy No. 6. The local trading rules in management plans aim to manage local impacts on a more specific basis than the statewide policy can do. By impacts the Commission means environmental and physical. Local rules would only apply social criteria if these were required for public interest reasons. The rules would guide the discretion of the WRC in its assessment of licence applications under Clause 7(2) of Schedule 1 of the RIWI Act. The decisions of the WRC are subject to review by a tribunal.

There are local rules contained in the Local Area Management Plan for Carnarvon that regulate trading. For example in order to manage local salt water intrusion transfer of entitlements to areas sensitive to salinity increase would not be allowed. As indicated above, the Carnarvon Plan will be provided separately.

5.1.3.4 Recent Trading Information

The Commission is able to generate a report on request that sets out recent (intrastate and interstate) trades, including the value, volume, location and nature of trades (for example, permanent versus temporary trades, and transfers from lower to higher value uses). Appendix 4 sets out these details current to 17 March 2004.

It is not compulsory for the applicant to provide details of the price of water in any trade, however the commission is investigating other ways to give a guide as to value of water traded, such as through the stamp duty system. This is currently under investigation and will need to be considered in conjunction with the Valuer General's Office.

5.1.3.5 Local by-laws

There are no by-laws at present and therefore no immediate implications for trading and water markets. The WRC is of the view that by-laws would be introduced only on social, environmental or resource impact management grounds, not on economic grounds.

5.1.3.6 Review of Trading Policy in Western Australia

Western Australia has not conducted a formal review of its trading policy but will undertake a semi-formal consultation process, seeking submissions from people who may have found difficulty in trading.

Western Australia has commenced discussions with a broking company in South Australia to investigate using its website to allow buyers and sellers to register their interests in trading.

5.1.4 Institutional Reform

5.1.4.1 Institutional Role Separation

As indicated above, the Economic Regulation Authority (ERA), as established by the *Economic Regulation Authority Act 2003*, commenced operation on 1 January 2004 as a single independent regulator for the electricity, gas, rail and water industries. It subsumes third party access and industry licensing functions previously undertaken by a range of sector specific regulators.

The Treasurer is responsible for overarching regulatory policy and the legislation to establish the ERA. Industry Ministers are responsible for industry specific policy development. This includes responsibility for industry licensing and third party access frameworks, as well as industry structure and planning processes and the setting of retail tariffs through regulations or by-laws.

Industry Ministers receive support through the relevant policy departments. However, it should also be noted that the ERA will be required to provide information to the relevant industry Minister on the operation of the respective industry licensing regimes, and any report on a regulated industry matter (such as retail prices and pricing policies) must be tabled in Parliament. As indicated in Section 5.1.1.3, the ERA will shortly commence an inquiry on water and wastewater prices.

Policy bodies retain responsibility for conducting expressions of interest for new infrastructure and service provision in areas not presently serviced. Prospective providers would be required to satisfy the Authority of their ability to meet licence terms and conditions in order to supply the new areas. However the Government would remain responsible for awarding any finite franchise licence.

The Department of the Environment continues the customer complaints resolution function previously undertaken by the Coordinator of Water Services. In the future this function may be transferred to a Utilities (or Energy and Water) Ombudsman.

5.1.4.2 Integrated Catchment Management

The framework is being implemented through involvement with the Regional Natural Resource Management Strategies that are currently being finalised by the Regional NRM Groups (associated with the NAP and NHT II). Strategies and activities related to waterways management are incorporated within the regional strategies and fit within the overall framework. Appendix 5 refers.

The timeframes for the completion of the Regional Strategies have been set by the Regional NRM Groups and are only indicative. The Government, as a partner, is working with the Regional NRM Groups to meet these deadlines and support the Groups through the provision of technical advice, assisting in identifying priorities, resource condition targets, management actions and management action targets for natural resources within Regional NRM Group areas.

The accreditation process for the regional strategies involves a review of the WRC's draft strategy documents, this includes assessment for suitability for public comment, consultation plans and the final document for formal accreditation. These reviews are undertaken jointly by the State and Australian Government with comments being combined in a joint decision by the Joint State Commonwealth Steering Committee.

5.1.4.3 Devolution of Irrigation Scheme Management

Stage 1 of the Ord Irrigation Scheme, including the distribution system and the headworks (the Ord Main Dam and the Ord Diversion Dam), is on track to be fully transferred from the Water Corporation to the Ord Irrigation Cooperative (OIC). On 1 July 2002 the management of the Scheme was transferred however there has been a delay in the transfer of the assets, which should be resolved by mid-2004.

Following the transfer the Corporation will continue to supply OIC with bulk water under a Water Supply Agreement. OIC will own, operate and maintain the Ord Irrigation Scheme (Stage 1) distribution system and will have responsibility for retail water service delivery to growers in the Scheme. The Corporation would continue to own, operate and maintain the headworks, the M1 channel and the Hillside Levies.

5.1.5 National Water Quality Management Strategy

Western Australia has advanced its implementation of NWQMS arrangements, particularly in areas that the Government undertook to address in 2003-04, including implementation of guidelines for fresh and marine water quality and guidelines for water quality monitoring and reporting. Appendix 6 sets out the NWQMS Implementation Status as at 15 March 2004 and proposed changes.

State Water Quality series document number 6 (SWQ6) has now been approved by Government and it was released in the first quarter of 2004. SWQ6 reflects Western Australia's approach to the implementation of NWQMS Guidelines 4 and 7 on fresh and marine water quality and guidelines for water quality monitoring and reporting. It is based upon the earlier recommendations of the Environmental Protection Authority to Government contained in EPA Bulletin 1078.

5.1.6 New Rural Water Infrastructure

The Minister for the Environment is in the process of establishing a Rural Water Investment Appraisal Steering Committee that will investigate potential investments in new, or extensions to existing, rural water supply infrastructure in Western Australia. The Committee will appraise and evaluate the economic viability and ecological sustainability of rural water investments.

5.1.7 Public Education and Consultation

There are 11 advisory committees and 2 Water Resource Management Committees that assist the Commission in the management of water resources in WA. These are:

Broome Groundwater Advisory Committee	Canning-Wungong-Southern Rivers Advisory Committee
Cockburn Groundwater Advisory Committee	Carnarvon Water Allocation Advisory Committee
La Grange Groundwater Advisory Committee	Gingin-Dandaragan Water Resources Management Committee (WRMC)
Rockingham Groundwater Advisory Committee	Serpentine-Dandalup-Murray Rivers Advisory Committee
South West Coastal Groundwater Advisory Committee	Warren Water Management Area Advisory Committee
Swan Groundwater Advisory Committee	Whicher WRMC
Wanneroo Groundwater Advisory Committee	

A Water Resource Management Committee (WRMC) (as established by Section 26GK of the RIWI Act) consists of local experts in the industry brought together to provide advice and assistance to the WRC on water resource matters within its local area.

One of the most important functions of the WRMC is to develop and consult on resource management plans. The process required in developing these plans is provided for in the RIWI Act. In particular Sections 26GZA to 26GZG outline the required public consultation processes required to be undertaken.

The Whicher WRMC, for example, has played a lead role in the Community Communication and Consultation program undertaken as part of the Blackwood Groundwater Area Planning Project. Details of their role and involvement can be seen at their website: www.wrc.wa.gov.au/whicher. This web page also contains a link to the Blackwood Groundwater Area Community Consultation and Communication website.

The Whicher WRMC is currently involved in formulating local trading rules, (consistent with Statewide Policy No 6) and these will be developed with other local community groups in the form of a discussion paper on trading.

The WRC's broad environmental responsibilities ensure that any of our projects demonstrate a mix of functions such as environmental advocate, educator, manager, legislator, researcher, facilitator or regulator. Genuine community involvement provides for shared understanding with the community of their visions and expectations for each project; areas of agreement and difference can be identified early and solutions developed before they become major issues.

The Commission has recently developed a Community Involvement Framework for internal use. The Community Involvement Framework outlines the policy (accessible at: http://www.environ.wa.gov.au/downloads/2568_CI_Policy.pdf) and principles underpinning the Commission's Community Involvement practices. Developed for staff by staff, it provides a 'checklist' to help:

- choose the appropriate level of Community Involvement for projects; and
- plan, implement and evaluate Community Involvement process.

A similar external publication has recently been released called the Draft Interim Industry Consultation Guidelines and is accessible at http://www.environ.wa.gov.au/downloads/2569_CI_Guidelines.pdf.

The State Government, through two key initiatives of the Department of Premier and Cabinet, further demonstrates the increasing importance of community involvement in decision-making:

- State Sustainability Strategy; and
- Establishment of the Citizens and Civics Unit (and their publications Consulting Citizens: A Resource Guide and Consulting Citizens: Planning for Success).

A State Water Strategy has also been compiled and released following an intensive community consultation program undertaken by the former Office of Water Regulation, the Water and Rivers Commission and the Water Corporation under the banner of 'Our Common Future". The full strategy document can be accessed at:

http://www.watercorporation.com.au/Docs/State_Water_Strategy_complete.pdf.

5.1.8 Water Legislation

The Minister for the Environment's portfolio is currently progressing the amendments to the water industry legislation as per each of the reviews endorsed by the Government. The legislation compendium contains all the relevant information regarding the legislative review process.

The Water Industry Legislation Amendment Bill is due to be considered in Parliament in the Autumn sitting of this year.

5.2 ROAD TRANSPORT

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.

The majority of the National Driver Licensing Scheme reforms were introduced in Western Australia in early 2001 following the passage of the *Road Traffic Amendment Act 2000*. The remaining reforms will be introduced via further amendments to the *Road Traffic Act 1974* and associated regulations contained in the Road Traffic Amendment Bill 2003 (2004). There has been a delay in drafting of that Bill, to allow for the completion of a licensing functional review to determine, amongst other matters, where administrative responsibility for licensing functions should most appropriately reside. Approval to print has been granted, it is anticipated that the Bill will be introduced into Parliament during the Autumn 2004 session.

Attachment 3 entitled "Progress on National Road Transport Reforms" includes detail of the status of implementation for the road transport reforms.

6 CONDUCT CODE AGREEMENT

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 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.

7 ATTACHMENT 1: THE NCC'S 2004 ASSESSMENT FRAMEWORK

7.1 SUMMARY OF MATTERS (EXCLUDING ENERGY AND WATER) FOR THE 2004 ASSESSMENT — WESTERN AUSTRALIA

7.1.1 Road Transport (CoAG reforms)

Matter	*Issues and information sought*
Driver licensing reforms One driver/one licence	Please confirm that final amendments to the Act and Regulations occurred in spring 2003, as had been foreshadowed.

7.1.2 Competitive Neutrality

Matter	*Issues and information sought*
Competitive neutrality complaints	Please provide information on complaints received and complaints resolved during 2003-04.
Application of CN to the hospital sector	Please provide a comprehensive update on the Minister for Health's consideration of the application of competitive neutrality principles to the business activities of public hospitals. Please report also on the Government's consideration of a mid-2002 CN complaint by a private Perth radiation oncology company about competition from a radiation oncology department of a Perth public hospital.
Coverage	Please provide an update on developments in the coverage of competitive neutrality principles, including the updating of universities' Acts to broaden their objects to cover competitive neutrality application.
Forests Products Commission (FPC)	How profitable was FPC in 2002-03 and how profitable is it expected to be over the next three years or more? If FPC is not expected to meet its cost of capital, why not? The 2003 Assessment found that a higher standard of disclosure of timber prices assumed for valuation purposes may be required to be confident that the aims of competitive neutrality are being achieved. What action has the Government taken in this regard?

7.1.3 Legislation Review and Reform

7.1.3.1 Specific Penalties

Matter	*State of play/ information sought*
Retail Trading Hours Act 1987 **10% permanent deduction**	Does not meet CPA obligations (2003). Has the Government undertaken appropriate action to meet its CPA obligations in this area?
Marketing of Potatoes Act 1946 **5% permanent deduction**	Does not meet CPA obligations (2003). Has the Government undertaken appropriate action to meet its CPA obligations in this area?
Liquor Licensing Act 1988 **5% permanent deduction**	Does not meet CPA obligations (2003). Has the Government undertaken appropriate action to meet its CPA obligations in this area?
Marketing of Eggs Act 1945 **5% specific suspension**	Does the Government intend to undertake appropriate action to meet its CPA obligations in this area?

7.1.3.2 Suspension Pool

Matter	*State of play/ information sought*
Agricultural and Veterinary Chemicals (Western Australia) Act 1995; Agricultural Produce (Chemical Residues) Act 1983; Aerial Spraying Control Act 1966	Please report on progress with the review and reform of this legislation which was incomplete owing to interjurisdictional processes.
Veterinary Preparations and Animal Feeding Stuffs Act 1976	Please report on the progress of legislation that was before Parliament at the time of the 2003 assessment.
Grain Marketing Act 1975	Please report on outcomes for applications to the Grains Licensing Authority.
Chicken Meat industry Act 1977	Please report on the progress of legislation that was before Parliament at the time of the 2003 assessment.
Health Act 1911 and Food regulations under the Health Act	Please report on review and reform progress for the Food regulations.
Veterinary Surgeons Act 1960	Please report on reform progress.
Fish Resources Management Act 1994	Does not meet CPA obligations (2003). Please advise of any reform progress.
Pearling Act 1990	Please report on implementation of the recommended reforms, particularly the Government's intention to retain hatchery quota against the recommendations of the NCP review.
Sandalwood Act 1929	Please report on the progress of legislation that was before Parliament at the time of the 2003 assessment, and on any further review and reform of restrictions of harvesting on private land.

Matter	*State of play/ information sought*
Taxi Act 1994	First-stage reforms were announced on 9 July 2003. Please provide a comprehensive update on taxi reforms since August 2003, including the progress of the Taxi Amendment Bill 2003 and any Ministerial policy announcements. Please confirm the timing of the release of the 50 additional plates, as announced in July 2003, and whether the Government has indicated how many additional plates will be released in following years. Please also provide up-to-date information on whether the Government proposes to reintroduce the buyback offer.
Explosives and Dangerous Goods Act 1961	The Dangerous Goods Safety Bill 2002 was scheduled for debate in the Upper House in September 2003. Please provide an update on progress with this Bill, including whether Parliament required any significant changes.
Jetties Act 1926 and Regulations; *Lights (Navigation) Protection Act 1938; Marine and Harbours Act 1981* and Regulations; *Shipping and Pilotage Act 1967* and Regulations; *Western Australian Marine Act 1982*	These Acts are to be repealed by the Maritime Bill and the Maritime and Transport Legislation Amendment and Repeal Bill. Please confirm the timing of the redrafting of the Maritime Bill, describe the broad features of the two new Bills, and provide the timing of their introduction to Parliament.
Transport Co-ordination Act 1966 (intrastate aviation)	Please provide an update report on the Government's consideration of intrastate aviation reforms and any actual or proposed amendments of legislation.
Health practitioner legislation: *Dental Act 1939; Dental Prosthetists Act 1985; Chiropractors Act 1964; Optical Dispensers Act 1966; Optometrists Act 1940; Nurses Act 1992; Osteopaths Act 1997; Physiotherapists Act 1950; Podiatrists Registration Act 1984; Psychologists Registration Act 1976; Occupational Therapists Registration Act 1980*	The Council and Western Australia previously agreed that the State's health practitioner core practices review would be completed and implemented fully by June 2004. The Government did not, however, introduce important template health practitioner legislation for which drafting commenced in 2001. Nevertheless, in July 2003, it advised the Council that a steering committee had been established and that its draft review report is expected soon. The Government indicated that 'this will enable legislative amendment to be implemented by June 2004'. Please provide a comprehensive progress report.
Medical Act 1894	New legislation has been scheduled for late 2003. Please provide an update on the nature and progress of this legislation.
Poisons Act 1964; Health Act 1911 (Part VIIA) *(*drugs and poisons)	Please report on progress with the review and reform of this legislation which was incomplete owing to interjurisdictional processes.
Pharmacy Act 1964	Department of Health has been considering the recommendations of the national Wilkinson review. Please provide an update report on the department's consideration and any reform decisions taken by the Government.

Matter	*State of play/ information sought*
Legal Practitioners Act 1893	Please report on progress with the review and reform of this legislation which was incomplete owing to interjurisdictional processes. Please also report on whether the Government will be reconsidering the advertising restrictions introduced in 2002.
Motor Vehicle Driving Instructors Act 1963	Please clarify when the review report was completed (it was expected in September 2003) and whether the Government has considered its recommendations. If so, what decisions has the Government taken?
Auction Sales Act 1973	Please advise whether the review of the Act by the Department of Consumer Affairs (following the 2001 NCP review) has been completed (it was anticipated that it would be concluded in late 2003). If so, what are its recommendations, and has the Government decided to make any legislative changes?
Travel Agents Act 1985 and Regulations	Please report on progress with the review and reform of this legislation which was incomplete owing to interjurisdictional processes.
Settlement Agents Act 1981	Review report was endorsed by Cabinet in May 2002. Please provide an update on the Government's progress in implementing reforms.
Pawnbrokers and Second-hand Dealers Act 1994	Please provide an update report on the progress of the draft Bill which was ready for Ministerial endorsement in mid-2003. Has the Government proceeded with this Bill, and has Parliament passed it without any significant amendment?
Debt Collectors Licensing Act 1964	Please confirm whether, following Cabinet's endorsement of the 2003 NCP report of this legislation, the Government has introduced (or will be introducing) any legislative changes?
Employment Agents Act 1976	Please report on the recommendations of the review that was finalised in mid-2003, the main comments received from stakeholders and subsequent consideration and reform decisions by the Government.
Hairdressers Registration Act 1946	The review was completed, but considered a limited range of alternative approaches. Please indicate whether the Government proposes to review this legislation any further and to introduce any reforms.
Real Estate and Business Agents Act 1978	Following the completion of the legislative review in February 2003, the Government commenced drafting legislative amendments. Please provide an update: has this drafting been completed and legislation presented to Parliament? If so, what are the main features of the legislation, and has it been passed.
Motor Vehicle (Third Party Insurance) Act 1943	Please report on progress with the Government's consideration of the 2000 review in the context of wider insurance market issues.

Matter	*State of play/ information sought*
State Superannuation Act 2000	Restricted review is under way. Please report on the progress of this review and any subsequent reform decisions. Does the Government intend to make any changes to its arrangements for monopoly provision of public sector superannuation?
Workers Compensation and Rehabilitation Act 1981	Please report on progress and nature of the minor legislative amendments that the Government proposed introducing to Parliament in spring 2003.
Petroleum Products Pricing Amendment Act 2000; Petroleum Legislation Amendment Act 2001	Does not meet CPA obligations (2003). Please advise of any reform progress.
Environmental Protection (Diesel and Petrol) Regulations 1999	Does not meet CPA obligations (2003). Please advise of any reform progress.
Retirement Villages Act 1992	Please report on progress in drafting amendments and their progress through Parliament.
Credit (Administration) Act 1984	Please advise on amendments and their progress through Parliament.
Hire Purchase Act 1959	Please report on the progress of legislation that was before Parliament at the time of the 2003 assessment.
Weights and Measures Act 1915	Please report on progress with the review and reform of this legislation which was incomplete owing to interjurisdictional processes.
Education Service Providers (Full Fee Overseas Students) Registration Act 1992	Please advise of progress in completing the review and implementing any recommended reforms.
Curtin University of Technology Act 1966; Edith Cowan University Act 1984; Murdoch university Act 1973; University of Notre Dame Australia Act 1989; University of Western Australia Act 1911	Please report on the progress of legislation that was before Parliament at the time of the 2003 assessment.
Community Services Act 1972 and the Community Services (Child Care) Regulations 1988	Please report on progress in drafting amendments and their progress through Parliament.
Lotteries Commission Act 1990; Gaming Commission Act 1987	Please advise of the Government's response to the review reports and any subsequent reform activity.
Betting Control Act 1954 (casinos and betting); *Totalisator Agency Board Betting Act 1960* (betting); *Racing Restrictions Act 1917*	Does not meet CPA obligations (2003). Please advise of any reform progress.
Western Australian Greyhound Racing Association Act 1981	Please report on the progress of legislation that was before Parliament at the time of the 2003 assessment.
Casino (Burswood Island) Agreement Act 1985; Casino Control (Burswood Island)(Licensing of Employees) Regulations 1985; *Casino Control Act 1984*	Exclusive licence has expired. Please report on removal of other key entry restrictions.
Gaming Commission Act 1987	Please advise the Government's response to the review report and any subsequent reform activity.

Matter	*State of play/ information sought*
Town Planning and Development Act 1928; Western Australian Planning Commission Act 1985; Metropolitan Region Town Planning Scheme Act 1959	Please provide details of the content and progress of legislation slated for Parliament in 2004.
Local Government (Miscellaneous Provisions) Act 1960 and Building Regulations 1989	Please advise on progress in drafting new legislation and the passage of the legislation through Parliament.
Architects Act 1921	Please report on the progress of legislation that was to be introduced to Parliament in 2003.
Licensed Surveyors Act 1909	Please report on the progress of legislation that was before Parliament at the time of the 2003 assessment.
Valuation of Land Act 1987	Please report on the progress of legislation that was before Parliament at the time of the 2003 assessment.
Painters Registration Act 1961	Please advise on Government response to review and any subsequent reform.
Gas Standards Act 1972 and Gas Standards (Gasfitting and Consumer Gas Installations) Regulations 1999	Please advise of progress in review and reform activity.
Electricity Act 1945 and Electricity (Licensing) Regulations 1991	Please advise of the content of the review report, the Government's response, and any subsequent reform activity.
Water legislation	Western Australia listed 35 water industry regulatory instruments for review and has completed reviews of 32. The Government endorsed the findings of the reviews but has not completed all recommended reforms. In its 2003 assessment, the Council reported that the Government was reforming eight Acts via a competition policy omnibus Bill in 2003, was drafting amendments or developing drafting instructions for another six Acts, and had work under way on the remaining instruments. The Council understands, however, that the water legislation originally slated for inclusion in the omnibus bill is now being progressed separately. As such, there is no water legislation before Parliament. Please advise of progress in the review and reform of all outstanding water legislation.

Shaded areas denote that the legislation is subject to an interjurisdictional process.

7.1.4 Outstanding Non-Priority Legislation

The Council is seeking an update of the status of non-priority legislation in which review and reform activity was incomplete at the time of the 2003 assessment. The Council's understanding of the status of outstanding non-priority legislation at that time is provided in the annex to this framework document.

Progress in completing non-priority legislation will be taken into consideration by the Council when assessing jurisdictions' overall performance in meeting their NCP obligations.

7.1.5 New Legislation and Gatekeeping

CPA clause 5(5) obliges governments to require all proposals for new legislation that restricts competition to be accompanied by evidence that the legislation is consistent with the clause 5 guiding principle. All governments have some form of gatekeeping arrangement to examine new regulatory proposals.

The Council considers the CPA clause 5(5) obligation to mean that governments should have in place legislation gatekeeping arrangements which maximise the opportunity for regulatory quality. The Council will consider the effectiveness of these arrangements in the 2004 assessment.

In this regard, the Council will need jurisdictions to elaborate further on the powers, responsibilities and reporting obligations of the gatekeeping mechanism, as reported by the Council in its 2003 assessment (see chapter 13, volume 2). This may necessitate jurisdictions providing updated material relating to the roles and responsibilities of their gatekeeping mechanism, its powers, reporting obligations and the types of legislation it assesses (including the triggers for assessment).

In particular, the Council is seeking detailed information on the following:

- Is there formal regulatory impact assessment of all legislation — including *new and amended primary legislation* (Bills) and *subordinate legislation* — that contains non-trivial restrictions on competition?

- Are there published guidelines for conducting regulation impact analysis that must be followed by all government entities that review or make regulations that restrict competition?

- Do impact assessment guidelines specifically embody the CPA clause 5 guiding principle?

- Is there independent body that:

  - advises agencies on when and how to conduct regulatory impact assessments?

  - is empowered to examine regulatory impact assessments and to advise the Cabinet on whether they provide an adequate level of analysis?

  - monitors and reports annually on compliance with the regulation impact analysis guidelines?

- Are there processes in place to ensure that all agencies adhere to gatekeeping requirements?

The Council is also interested to know whether there are gatekeeping processes in place to facilitate consideration of interjurisdictional consistency (or harmonisation) when assessing regulatory impacts.

All jurisdictions should provide the Council with information on legislation considered by the gatekeeping process since 1 July 2003, including the total number of pieces of legislation assessed, the number for which an appropriate regulation impact assessment was conducted, and the number assessed as meeting the CPA clause 5 guiding principle.

The Council may undertake its own checks of compliance by examining whether particular pieces of new legislation meet the CPA clause 5 guiding principle. Governments are invited to raise with the Council, in advance, any proposed legislation that might have clause 5(5) implications.

7.1.6 National Standards Setting

Under the Agreement to Implement the NCP and Related Reforms, governments are to ensure that Ministerial councils and intergovernmental standard-setting bodies set national regulatory standards in accord with principles and guidelines endorsed by CoAG and with advice from the Australian Government's Office of Regulation Review (ORR) on compliance with these principles and guidelines.

The Council will base the 2004 assessment of governments' NCP compliance on the compliance report developed by the ORR. The ORR will advise on compliance over the 12 month period 1 April 2003 to 31 March 2004.

7.2 ELECTRICITY

The Council seeks information on progress with the implementation of the structural and regulatory reform program for the Western Australian electricity sector agreed by the Government following from the recommendations of the Electricity Reform Task Force.

The agreed program and timetable included:

- the vertical disaggregation of Western Power into generation, networks (transmission and distribution) and retail entities, and the establishment of a fourth entity, the Regional Power Corporation, with responsibility for electricity supply in the north west interconnected system and Western Power's noninterconnected system, by 1 July 2004;

- the establishment of a bilateral contracts market with an associated residual trading market;

- the mitigation of Western Power's generation market power through the auctioning of its capacity, a requirement that it participate in the residual trading market and restrictions on its ability to invest in new or replacement fossil-fuelled generation plant;

- the retention of uniform tariffs and retail price caps;

- the implementation of retail contestability for all customers above 50 megawatt hours per year from 1 January 2005, then full implementation once the other reforms have been completed; and

- the development of an Electricity Access Code (to be administered by an independent regulator) by 1 January 2004 and the operation of the new access framework and licensing regime by 1 January 2005.

The Council will assess Western Australia's progress with implementation against this timetable in the 2004 NCP assessment.

7.3 GAS

State and Territory governments' gas commitments under the NCP arise from the Agreement to Implement the National Competition Policy and Related Reforms, the CPA and other agreements on related reforms for the gas sector (gas agreements).

The NCP gas reform program has been substantially completed, with only a few issues remaining outstanding for the 2004 NCP assessment.

7.3.1 Submerged Lands Legislation

All States and the Northern Territory have petroleum (submerged lands) legislation that forms part of a national scheme that regulates exploration for, and the development of, undersea petroleum resources. These Acts were reviewed in 1999-2000. The Australian and New Zealand Minerals and Energy Council Ministers endorsed the national review report, which was made public in March 2001, following consideration by CoAG. A number of changes have been made to legislation following the review.

The Council understands that the Commonwealth Petroleum (Submerged Lands) Act has been rewritten and that a Bill incorporating the changes was introduced into Commonwealth Parliament on 17 September 2003. All relevant jurisdictions indicated that they will then amend their legislation to reflect the changes to the Commonwealth legislation.

The Council seeks advice from all relevant jurisdictions on their progress in reforming their submerged lands legislation.

7.3.2 On-Shore Acreage Management Legislation

Western Australia reviewed the *Petroleum Act 1967* and Petroleum Regulations 1987. Amendments arising from the national review of the submerged lands legislation have not yet been implemented.

7.3.3 Full Retail Contestability

Both Western Australia and South Australia have removed regulatory barriers to full retail contestability. At the time of the 2003 NCP assessment, neither jurisdiction had introduced the necessary regulations and systems to allow for customer transfer and establishment of the retail market.

The Council seeks information on the progress each jurisdiction has made towards establishing the necessary systems to support full retail contestability.

7.3.4 Gas Quality Standards

The Australian gas industry has been developing a national gas quality standard so processed gas can move through all interlinked pipeline networks without adversely affecting pipelines or gas appliances. The Council considers that such a standard is important to achieving a national gas market through the removal of barriers to interstate gas trade, and to implementing free and fair trade in gas.

The Council seeks advice from each jurisdiction on progress made in implementing the standard, including details on how the standard is to be implemented and a timetable for full implementation

7.4 WATER

7.4.1 Specific Rural Water Implementation Matters

7.4.1.1 Rural Water Services

Western Australia provides some irrigation scheme and rural bulk water supply services. In the 2001 NCP assessment, the Council found that some government-owned irrigation schemes and some government-owned suppliers of bulk water were not recovering the full cost of supply and/or were not charging on a consumption basis. The Council also noted that the Government was subsidising the cost of rural water services provided by the Water Corporation as part of a broader CSO, rather than a separately identified subsidy. For the 2004 NCP assessment, the Council is looking for Western Australia to show that it has substantially met full cost recovery and consumption-based pricing objectives. Western Australia should provide information on the extent to which rural water businesses recover costs and set prices on a consumption basis. Where a rural water businesses will not achieve full cost recovery by 30 June 2004, Western Australia should show that the business has substantially met full cost recovery objectives at 30 June 2004 or is applying a price path that should achieve full cost recovery within a short period after 30 June 2004, with any transitional CSOs separately identified and made transparent. As part of this, Western Australia should identify any rural water businesses that are unlikely to achieve full cost recovery, and demonstrate that the CSOs supporting these schemes are transparent.

7.4.1.2 Water Licence Fees

Western Australia imposes fees for various types of water licences. In the 2001 NCP assessment, the Council found that the State's licence fees were not consistently applied, and reflected historical fees rather than resource management and other licensing costs. Western Australia did not provide information on whether licence fees provide consumption-based pricing signals. For the 2004 NCP assessment, Western Australia should demonstrate that licence fees for unregulated and groundwater water users reflect the cost of the relevant resource and provide consumption-based pricing signals.

7.4.2 Urban Water Pricing Assessment Matters

While all of Western Australia's water and wastewater businesses, including the Water Corporation, are likely to be pricing their services to fully recover costs, there is no publicly available information to show that Western Australia's pricing arrangements satisfactorily address the CoAG pricing principles. Western Australia undertook to address pricing transparency questions by establishing the Economic Regulation Authority (ERA) and providing the authority with a reference (against the CoAG pricing principles) to investigate and recommend on water and wastewater pricing. By establishing the ERA and providing it with responsibility for regulation of the water industry, Western Australia would also meet its institutional structure reform obligations under the CoAG water reform agreement.

At the time of the 2003 NCP assessment, the Western Australian Government had legislation before the Parliament to establish the ERA. The Government advised that it was having difficulty in achieving passage of the legislation, but would, in anticipation of the Parliament agreeing to establish the ERA, develop a draft reference that asks the authority to investigate and recommend on water and wastewater pricing. On the Council's recommendation (in the 2003 NCP assessment), the Australian Government Treasurer suspended 10 per cent of Western Australia's 2003-04 competition payments until Western Australia establishes the ERA and provides it with a reference to investigate and report on water and wastewater pricing by the Water Corporation (and ideally also the Bunbury and the Busselton water boards).

Subsequent to the assessment, legislation to establish the ERA has passed through the Western Australian Parliament. The ERA will be formally established on 1 January 2004. Providing the ERA's work shows that water and wastewater pricing by Western Australia's water businesses is consistent with the CoAG water agreement and the CoAG pricing principles and that there are future references that enable regular examination of pricing by the ERA, Western Australia would meet its CoAG pricing obligations. Western Australia would also meet its institutional structure obligations once it establishes the ERA with responsibility for the water industry.

For the Council to recommend the lifting of the suspension of Western Australia's 2003-04 competition payments, Western Australia will need to announce an investigation by the ERA of water pricing, covering at least urban water pricing by the Water Corporation (and ideally also the Bunbury and the Busselton water boards). Such an investigation could be a forward-looking examination of pricing arrangements, aimed at recommending to the Government on urban water pricing structures (consistent with the CoAG water agreement and pricing principles) that should apply into the future. The Council would look for the ERA to have completed its investigation of urban water pricing, and for the Government to have considered and applied the ERA recommendations, by the 2005 NCP assessment. Accordingly, the Council will consider Western Australia's progress on these matters in 2004 and again in 2005, when it will complete its assessment of the State's compliance with urban pricing obligations.

7.4.3 Water Management

In Western Australia, the holder of a water licence must own, occupy or have access to the land on which the water occurs, and must intend to use the water. Licences include a time limit for water entitlements to be used before the entitlement may be forfeited. The Water and Rivers Commission manages the licensing system (including forfeitures) and unused entitlements, and maintains a register of licences and entitlements. The commission has significant powers under the *Rights in Water and Irrigation Act 1914,* including the power to issue a direction overriding all other rights recognised by the Act.

The Water and Rivers Commission released draft policy guidelines on the management of unused licensed water entitlements for public consultation in March 2003. The commission also released a discussion paper on the use of its unused allocations in March 2003.

For the 2004 NCP assessment, the Council requests Western Australia to report on:

- the restrictions on who can hold a water licence — Western Australia should either remove the restrictions or demonstrate that they provide a net public benefit, including that they do not unjustifiably restrict the entry and behaviour of market participants (such as agents and brokers whose activities may facilitate trade in water entitlements) or the ability of financial institutions to obtain ownership of water entitlements in the event of default;

- the Water and Rivers Commission's final policy guidelines on the management of unused licensed water entitlements and how the management arrangements address CoAG obligations;

- the outcome of the commission's review of the use of its unused allocations, demonstrating that the commission's management arrangements are consistent with CoAG objectives such as the facilitation of trading in entitlements;

- any directions issued during 2003-04 by the commission overriding other rights recognised by the Act and whether the directions are likely to have a significant impact on the risks to entitlement holders and the value of water entitlements; and

- progress with providing Internet access to the commission's register of licences and entitlements.

7.4.4 Water Trading

Western Australia has policy guidelines for water trading and an interim subpolicy to guide the operational management of trading. The Rights in Water and Irrigation Act contains provisions that may constrain trade in water entitlements, including: (1) scope for local by-laws to prohibit trade; (2) a requirement that a licence holder must be an owner or occupier of land or have access to land; and (3) a time limit for water entitlements to be used (before the entitlement may be forfeited). (The second and third of these constraints are discussed in the section on water entitlements above.) The Water and Rivers Commission may refuse trade in entitlements that have not been used, though it is reviewing its policy guidelines on unused entitlements (also see the section on water entitlements). The commission may also refuse trades to prevent monopolies in water.

Subregional and local area water management plans may include trading rules. The trading rules in the plans are required to be compatible with the Statewide guidelines or to address potential conflicts or limitations on the implementation of the guidelines.

For the 2004 NCP assessment, in addition to the issues raised in the section on water entitlements, the Council requests Western Australia to report on:

- any local by-laws introduced to prohibit water trade and the rationale for those by-laws;

- the Water and Rivers Commission's power to refuse trades to prevent monopolies in water, particularly the need for the power given the *Trade Practices Act 1974* and the nature of the competition test applied in reaching a decision to refuse approval for a trade;

- the outcome of the commission's annual review of the effectiveness of the policy guidelines for water trading;

- the trading rules in subregional and local area water management plans; and

- the timeliness of trading approvals.

7.4.5 Institutional Reform

7.4.5.1 Institutional Role Separation

Because Western Australia's water and wastewater pricing arrangements are not transparent, it is not clear whether these arrangements satisfactorily reflect the CoAG pricing principles. Western Australia undertook to address pricing transparency questions via legislating to establish the ERA and providing the authority with a reference against the CoAG pricing principles to investigate and recommend on water and wastewater pricing. The ERA would need to show that water and wastewater pricing is consistent with the CoAG pricing principles for Western Australia to achieve compliance with pricing requirements (see discussion of urban pricing reforms for Western Australia at section 3.1). Establishing the ERA with responsibility for the economic regulation of the water industry would meet CoAG obligations on institutional role separation. For the 2004 NCP assessment, Western Australia should report on its progress with establishing the ERA and providing the ERA with a reference to investigate water and wastewater pricing.

7.4.5.2 Devolution of Irrigation Scheme Management

For the 2003 NCP assessment, Western Australia reported that management of the South–West Irrigation Cooperative and the Carnarvon Irrigation Scheme had been devolved to local irrigators and that management devolution of the Ord Irrigation Scheme was under way. For the 2004 NCP assessment, Western Australia should report on progress with devolution in the Ord Irrigation Scheme.

7.4.5.3 Integrated Catchment Management

At the time of the 2003 NCP assessment, none of Western Australia's regional natural resource management strategies was endorsed under State processes. Progress with refining the strategies to meet national accreditation criteria was slow due to delays in Natural Heritage Trust extension funding and the absence of a bilateral agreement with the Australian Government on the National Action Plan for Salinity and Water Quality. Western Australia has now received Natural Heritage Trust extension funding and has reached a bilateral agreement on the national action plan. For the 2004 NCP assessment, Western Australia should report on progress with finalising and accrediting the State's six regional natural resource management strategies.

For the 2003 NCP assessment, Western Australia reported that the Waterways WA framework would be in place by the end of 2003. The framework was developed to facilitate and support land care practices to protect rivers with high environmental values. For the 2004 NCP assessment, the Council is looking for Western Australia to report on implementation of the Waterways WA framework in accord with the timetable proposed by the Government.

7.4.6 National Water Quality Management Strategy

Western Australia has been slow to implement elements of the NWQMS. For the 2004 NCP assessment, the Council will look for Western Australia to have significantly advanced its implementation of NWQMS arrangements, particularly in areas that the Government undertook to address in 2003-04 — including implementation of guidelines for fresh and marine water quality and guidelines for water quality monitoring and reporting.

7.4.7 Water Legislation Review and Reform

For the 2003 NCP assessment, Western Australia listed 35 water industry regulatory instruments for NCP review, and had completed reviews of 32. The Government endorsed the findings of each review, mostly in 1999 or 2000 but had not completed all recommended reforms. Western Australia originally intended to reform eight water Acts in 2003 via a competition policy omnibus Bill but subsequently decided to progress the water matters separately. There is currently no proposal before the Parliament in relation to the State's water legislation.

For the 2004 NCP assessment, the Council is looking for Western Australia to implement appropriate reforms to all remaining water legislation. Given the CPA requirement that review and appropriate reform of legislation that restricts competition be completed by 30 June 2002, the Council considers that the existence of significant remaining reform activity is likely to raise substantial NCP compliance questions.

The Council also draws Western Australia's attention to provisions in the Rights in Water and Irrigation Act that may constrain trading in water entitlements (see the discussion on water trading above). The Council will consider in the 2004 NCP assessment whether Western Australia's regulatory arrangements meet the CoAG obligation to facilitate water trading.

8 ATTACHMENT 2: WATER REFORM

8.1 ECONOMIC REGULATION AUTHORITY - WATER PRICING INQUIRY DRAFT TERMS OF REFERENCE

Inquiry On Water And Wastewater Pricing

Terms of Reference

I, ERIC RIPPER, Treasurer (following consultation with the Minister for the Environment and the Minister for Government Enterprises) and pursuant to Section 32(1) of the *Economic Regulation Authority Act 2003* (the ERA Act), request that the Economic Regulation Authority (the Authority) undertake an inquiry into the water and wastewater pricing of the Water Corporation (as established by the *Water Corporation Act 1995*) and the water pricing of the Bunbury Water Board and Busselton Water Board (as established by the *Water Boards Act 1904*).

The Authority is to investigate and report on the following matters related to the pricing of water and wastewater services in Western Australia:

- the appropriate charging structures and recommended tariff levels for the Water Corporation's and the Bunbury and Busselton Water Board's urban water supply services (residential and non residential); and
- the appropriate charging structure and recommended tariff level for the Water Corporation's urban wastewater services (residential and non residential).

Section 26 of the ERA Act requires the ERA to have regard to certain matters:

- the need to promote regulatory outcomes that are in the public interest;
- the long-term interests of consumers in relation to the price, quality and reliability of goods and services provided in relevant markets;
- the need to encourage investment in relevant markets;
- the legitimate business interests of investors and service providers in relevant markets;
- the need to promote competitive and fair market conduct;
- the need to prevent abuse of monopoly or market power; and
- the need to promote transparent decision-making processes that involve public consultation.

In conducting its investigation, the Authority must review:

- the regulatory asset base of each of the service providers;
- the non capital cost forecasts of the service providers;
- the depreciation and forecast capital expenditure program of the service providers; and

- the appropriate rate of return on public sector assets, including appropriate payments of dividends to the Government of Western Australia.

The Authority must give consideration to, but will not be limited to, the following matters:

- the methodology for assessing the revenue requirements of the service providers;
- the most appropriate price path and period, including the requirement for periodic reviews of that price path;
- the current structure and level of urban water and wastewater prices;
- the cost of providing the services concerned, including
  - a target for improvement in the efficiency in the supply of services;
  - any additional resources needed to meet the required standards of quality, reliability and safety, including such matters as the protection and development of future water resources; and
  - how changes in standards and operating conditions faced by the service providers impact on its revenue requirements;
- the impact of pricing policies on borrowing, capital and dividend requirements and, in particular, the impact of any need to renew or increase relevant assets;
- considerations of demand management;
- the effect on and of general price inflation over the medium term;
- the need to maintain ecologically sustainable development, including by appropriate pricing policies that take account of all feasible options for protecting the environment;
- the social impact of the recommendations; and
- the effect of any pricing recommendation on the level of Government funding (through Community Service Obligation payments).

In developing its recommendations the Authority is to have regard to the following policies:

- the pricing principles of the 1994 COAG water reform agreement (as set out in Appendix 1A to this reference);
- the Western Australian State Government's Uniform Pricing Policy;

- the Western Australian State Government's Sustainability Policy;
- the Western Australian State Government's Community Service Obligations Policy; and
- the pricing mechanisms available to the utility service providers through the Water Agencies (Powers) Act 1984 and the Water Boards Act 1904.

The Authority will release an issues paper as soon as possible after receiving the reference. The paper is to facilitate public consultation on the basis of invitations for written submissions from industry, government and all other stakeholder groups, including the general community.

A draft report is to be made available by 18 March 2005 for further public consultation on the basis of invitations for written submissions.

A final report is to be completed by no later than 12 August 2005. This will ensure that any recommendations adopted by the Government are available for implementation in 2006/07.

8.2 GUIDELINES FOR THE APPLICATION OF SECTION 3 OF THE COAG WATER REFORM AGREEMENT (THE COAG PRICING PRINCIPLES)

1. Prices will be set by the nominated jurisdictional regulators (or equivalent) who in examining full cost recovery as an input to price determinations should have regard to the principles set out below.

2. The deprival value methodology should be used for asset valuation unless a specific circumstance justifies another method.

3. An annuity approach should be used to determine the medium to long-term cash requirements for asset replacement/refurbishment where it is desired that the service delivery capacity be maintained.

4. To avoid monopoly rents, a water business should not recover more than the operational, maintenance and administrative costs, externalities, taxes or TERs (tax equivalent regime), provision for the cost of asset consumption and cost of capital, the latter being calculated using a weighted average cost of capital.

5. To be viable, a water business should recover, at least, the operational, maintenance and administrative costs, externalities, taxes or TERs (not including income tax), the interest cost on debt, dividends (if any) and make provision for future asset refurbishment/replacement (as noted in (3) above). Dividends should be set at a level that reflects commercial realities and stimulates a competitive market outcome.

6. In applying (4) and (5) above, economic regulators (or equivalent) should determine the level of revenue for a water business based on efficient resource pricing and business costs. Specific circumstances may justify transition arrangements to that level.

7. In determining prices, transparency is required in the treatment of community service obligations, contributed assets, the opening value of assets, externalities including resource management costs, and tax equivalent regimes.

Notes

The reference to "or equivalent" in principles 1 and 6 is included to take account of those jurisdictions where there is no nominated jurisdictional regulator for water pricing.

The phrase "not including income tax" in principle 5 only applies to those organisations that do not pay income tax.

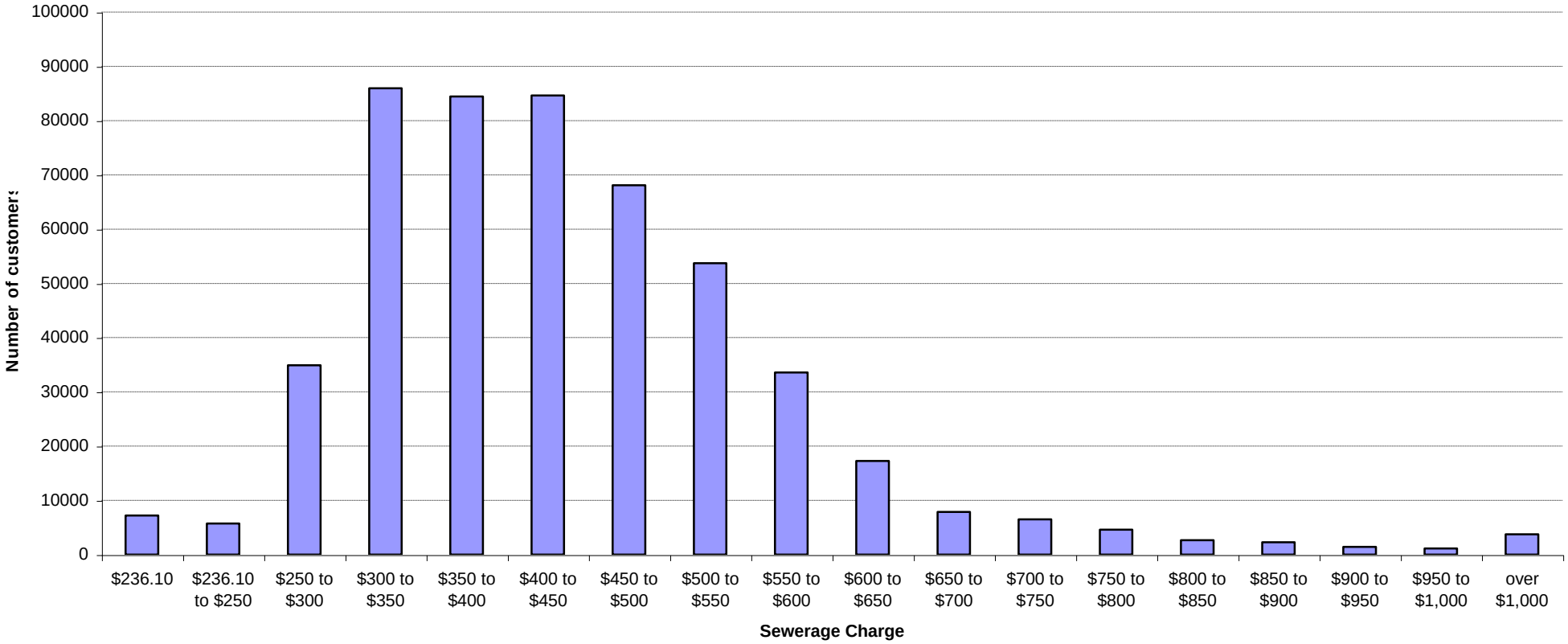
"Externalities" in principles 5 and 7 means environmental and natural resource management costs attributable to and incurred by the water business.

"Efficient resource pricing" in principle 6 includes the need to use pricing to send the correct economic signals to consumers on the high cost of augmenting water supply systems. Water is often charged for through a two-part tariff arrangement in which there are separate components for access to the infrastructure and for usage. As an augmentation approaches, the usage component will ideally be based on long-run marginal costs so that the correct pricing signals are sent.

"Efficient business costs" in principle 6 are the minimum costs that would be incurred by an organisation in providing a specific service to a specific customer or group of customers, or the minimum amount that would be avoided by not providing the service to the customer or group of customers.

Efficient business costs will be less than actual costs if the organisation is not operating as efficiently as possible.

8.3 DISTRIBUTION OF 2003/04 METROPOLITAN SEWERAGE CHARGES



8.4 REVISED GROUNDWATER AND SURFACE WATER MANAGEMENT PLANS, REPORTS AND ALLOCATION STRATEGIES

Plan	Year	2001 Report to NCC	Action taken	Review December 2002	Position reported to NCC March 2003	Review March 2004 (OAG response) for inclusion in 2004 Report to NCC
Systems which are exhibiting environmental stress						
Gnangara Groundwater Resources, Environmental. Review and Management Program	1986/92 1988 and 1997	Under Review	Section 46 review initiated 2001/02	Under review 2002-03 on schedule	On schedule, will be completed December 2003	Section 46 review being undertaken. Aim to be completed by June 2005 with revised EWPs set which will feed into the Perth to Gingin Subregional Plan
Perth to Gingin Subregional Plan.	NEW					Review completed has resulted in the combining of several smaller plans Incorporates the Wanneroo, Swan, Mirrabooka, Gwelup, Perth North, Gnangara and Yanchep plans. and planning has commenced - draft due for completion 2006/07.
Perth Northwest Corridor Groundwater Management Plan	1992	Deferred	Position assessed	Review 2002/03 on schedule	On schedule, will be completed December 2003	To be incorporated in the Perth to Gingin Subregional Plan
Swan Subregional	1997	Under Review	Position assessed	Review 2004/05	On schedule	To be incorporated in the Perth to Gingin Subregional Plan

Wanneroo Local	1993	Under Review	Under review	Review 2004/05	On schedule	To be incorporated in the Perth to Gingin Subregional Plan
Jandakot Groundwater Review	1991	Deferred	Assessed as low priority	No action proposed at this time	On schedule	Section 46 review of EWPs being undertaken. To be completed by June 2005 with revised EWPs to be set.
Canning River Interim Local Plan	NEW					Monitoring has indicated system is exhibiting stress and a Interim Strategy is being developed to determine appropriate EWPs and management responses
Systems where significant growth in demand is planned in near term and EWPs need to be determined to prevent them becoming over-allocated and stressed						
Harvey Basin Regional	1998	Completed 1999	Position reviewed	2nd Review 2005/06	On schedule	Plan operating well. EWPs have been set for Samson Brook and Wokalup Creek. Review deferred to 2009/10
Blackwood Subregional Groundwater Plan	2002/03			DROUGHT REPONSE PRIORITY - Incorporated in planning for 2002/2003	Draft will be complete December 2003 Final Scheduled for 2004/2005	Interim EWRs have been developed. Preparation of Subregional plan proceeding. An interim allocation management strategy is being considered for completion by June 2005, and the final Plan due

						by October 2007.
Busselton-Capel Subregional Groundwater Plan	1995	Under Review	Position assessed and reviewed	Review 2003/04 extended to include SW & GW 1st draft 2004/05 final 2005/06	On schedule	Review has commenced, using results from modelling undertaken in Blackwood Subregional project. Scheduled for continuing work in 2004/05, for completion in 2006/07
Bunbury Subregional	1994	Review 2002/03	Continuing review	To be incorporated in Kemerton Plan 2002/03 on schedule	On schedule, will be completed December 2003	Is being incorporated into the review being undertaken for the Busselton-Capel Subregional, as the aquifers are continuous and better considered as a unit with Busselton.
Busselton Coast - Lower Blackwood Groundwater and Surface Water Plan - Change of name: Whicher Region Plan	NEW			Position reviewed. Planning process began 2002-03	Planning begun 2002/2003 On schedule for Draft 2004/2005 and Final 2005/2006	Preparation of plan deferred due to high priority work on the Blackwood Subregional Groundwater plan. Work has not proceeded. Work not scheduled until 2005-06. Work to date has concentrated on the Blackwood GW Plan which forms half of this area
Cape to Cape (Vasse) Surface water Subregional	NEW	In Progress 2001/02	To be completed 2003/04 Position	Incorporated in Busselton Coast/Blackwood integrated SW/GW Plans (The Whicher Region Plan) - listed under	Note that Blackwood Groundwater Area now being completed first as a	See comment above (under 'Whicher Region Plan')

			reviewed	Surface Water Plans	separate plan, but overall regional plan remains on schedule	
Ord River	1997	Draft Interim to be completed	Draft plan completed 2001/02	Late 2001- early 2002 - The preferred tenderer for the development of M2 Channel withdrew. Supply Area Additional field studies of the water quality and biological response of the Ord River to low flows were carried out in October 2002.	Final Plan due 2003-04. On schedule	Major changes to the previously assessed Ord Hydropower Station demand emerged from feasibility studies of the conversion of the Argyle Diamond Mine into an underground operation. This meant a further major review of the water allocation priorities between irrigation and hydro-power generation. Final EWRs to be set by June 2004 and final plan to be released by June 2005.
Collie Water Resource Management Strategy (to be done as a Subregional plan)	1988	Under Review 2002/03	Continuing review	Review beginning 2002/03 on schedule for completion of final2004/05	Review complete. Draft plan complete July 2003 final plan for completion 2004/2005	Interim EWPs were determined for Collie downstream of Wellington dam in May 2003 to allow additional allocation as part of the Drought Response Program. Additional work currently being done upstream of Wellington Dam. Further work is required on groundwater EWPs for the Collie Groundwater Basin. Groundwater EWP work

						scheduled for 2006-07 and plan for 2007-08.
Pilbara Regional Plan	NEW	In progress 2001/02	Strategy undertaken	Strategy to be completed 2004/05	On schedule	Issue scoping, initial cultural values assessment completed. Recent rapid growth in demand for water in mining actives has significantly increased pressure on water dependent environmental systems such as Millstream. The focus of the regional plan is being reviewed to identify management responses required to prevent system stresses.
Perth-Bunbury Regional	1997		Position reviewed	Review in 2004/05	On schedule	Need to progress this plan is being reviewed in light of the other Subregional plans underway that cover this area, including the Perth to Gingin Regional Plan. Modelling work is currently concentrating northwards on Perth to Gingin, as this is where the pressures on the resources are.
Highly allocated systems which require review to ensure adequate EWPs						
Plans completed						

Arrowsmith Subregional	1995	Under review	Completed 2001/02	2nd Review by 2009/10	On schedule	On schedule
Gingin Subregional	1993	Under Review	Completed 2001/02	2nd Review by 2009/10	On schedule	On schedule
Jurien Subregional	1995	Under review	Completed 2001/02	2nd Review by 2009/10	On schedule	On schedule
Albany Local	1991	Under Review 2001/02	Strategy completed 2001/02	2nd Review by 2009/10	On schedule	On schedule
Marbellup Interim Local		In Progress 2001/02	Completed 2001/02	2nd Review by 2009/10	On schedule	On schedule
Rockingham/Stake Hill Subregional	1988	Under Review	Completed 2000/01	2nd Review by 2008/09	On schedule	On schedule
Cockburn Subregional	1993	Under Review	Completed 01/02	2nd Review by 2009/10	On schedule	Subarea allocation limit and boundary review in process and due for completion June 2004
Esperance Local Draft	1997	Under Review 2000/01	Completed 2001/02	2nd Review by 2009/10	On schedule	On schedule
Carnarvon Local		In Progress 2001/02	In progress	To be completed 2002/03 On schedule	On schedule. Will be completed December 2003	Plan implemented

Plans on schedule						
Broome Subregional	1994	Deferred	Position assessed	Review 2004/05	On schedule	On schedule
Derby Local	1992	Review 2001/02	Position assessed	Review 2004/05	On schedule	On schedule
Exmouth Local	1999	Review 2002/03	Position assessed	Review 2006/07	On schedule	On schedule
Kemerton Local	NEW	In Progress 2001/02	Completed 2001/02	2nd Review by 2009/10	On schedule	Review initiated early due to additional demand for light industrial development in the area. Draft to delivered by June 2004.
South West Coastal Groundwater Management Review	1989	Deferred	Position assessed	To be incorporated in Kemerton Plan (2002/03) on schedule	On schedule, will be completed December 2003	Kemerton is in this area and review timeline has been extended to allow this review to be incorporated.
Systems with low allocation - low priority						
La Grange Subregional		Draft in Progress 2002/03	Position reviewed	To be incorporated in Kimberley Plan	On schedule	Planned irrigation development in the area has been deferred so need for plan has eased and priority reduced.
Kimberley Regional	NEW				See La Grange	No action proposed at this time

Murray Subregional	1997	Under Review	To be reviewed 2002-03	Review completed, priority low	No action proposed	No action proposed at this time
Murray Surface water	NEW	In Progress 2001/02	Position reviewed	Reviewed 2005/06	On schedule	On schedule
Goldfields Regional	1994	Under Review	Position paper completed (2001/02)	No action proposed at this time	Nothing proposed	No action proposed at this time
Rottnest Groundwater Management Review	1987	Deferred	Assessed as low priority	No action proposed at this time	Nothing proposed	No action proposed at this time
Bolgart Groundwater Management Review	1990	Deferred	Assessed as low priority	No action proposed at this time	Nothing proposed	No action proposed at this time
Bremer Bay local		In Progress 2001/02	Position reviewed	No action proposed at this time	No action proposed	No action proposed at this time
Bremer Bay Groundwater Protection	1995	Review 2001/02	Position assessed	Low priority	No action proposed	No action proposed at this time
Gascoyne Junction Interim Local		In Progress 2001/02	Position reviewed	Low priority	No action proposed	No action proposed at this time

8.5 RECENT TRADE INFORMATION

Region	Groundwater Resource Description	Volume	Date application accepted	Date of Issue
Kwinana Peel Region	Cockburn, Thompsons, Perth - Superficial Swan	32,000	10-Feb-03	11-Feb-03
		14,230	27-Feb-03	25-Mar-03
	Rockingham, Churcher, Perth - Superficial	385,000	10-May-02	12-Mar-03
MidWest Region	Carnarvon, Basin 1, Carnarvon - Superficial	36,000	12-Aug-03	14-Aug-03
NorthWest Region	Broome, 12 Mile, Canning - Broome	30,000	04-Mar-03	25-Mar-03
Swan Goldfields Agricultural Region	Swan, Central Swan, Perth - Superficial	5,000	14-Oct-03	10-Dec-03
	Wanneroo, Carabooda, Perth - Superficial	10,000	12-Aug-03	21-Oct-03
		20,000	08-Oct-03	17-Oct-03
	Wanneroo, Lake Gnangara, Perth - Superficial	56,900	31-Jan-03	06-May-03
		13,275	11-Mar-04	12-Mar-04
	Wanneroo, Mariginiup, Perth - Superficial	129,650	16-Apr-03	17-Sep-03
		56,050	17-Dec-02	18-Dec-02
SouthWest Region	Busselton-Capel, Quindalup - Vasse, Perth - Upper	30,000	16-May-02	26-Jul-02

	Leederville.			
		90,000	09-Apr-02	27-Jun-02

8.6 RECENT AGREEMENT INFORMATION

Region	*Groundwater Resource Description*	*Volume*	*Date application accepted*	*Date of Issue*
Kwinana Peel Region	Cockburn, Wellard, Perth - Yarragadee North.	1679000	01-Jul-03	06-Oct-03
Swan Goldfields Agricultural Region	Goldfields, Lake Carey, Combined - Fractured Rock West - Fractured Rock	550000	20-Jun-03	20-Jun-03
Region	*Surface water Resource Description*	*Volume*	*Date application accepted*	*Date of Issue*
NorthWest Region	Indian Ocean - Div. 7, Ashburton River	1500	21-Aug-02	23-Oct-02

8.7 REGIONAL STRATEGIES AND INVESTMENT PLANS ACCREDITATION TIMELINE

(As At 11 March 2004)

The following time frames on when Regional Strategies and Investment Plans will be presented to the Joint Steering Committee were provided by Regional Group Executive Officers. The timing of when the regional strategies and investment plans will be considered have been extrapolated from a revised 2-stage accreditation process and are guides only. The State and Commonwealth have undertaken to provide advice to the Ministers on strategies that are eligible for accreditation within 6-7 weeks of receipt of the regional and investment strategies, with funds delivered to the 'glass jar' within 6-7 weeks of this.

Regional group	Community Engagement Protocols presented to JSC for sign-off (1 week turnaround)	Regional strategy presented and JSC approval that strategy acceptable for community consultation (1 week turnaround)	Beginning of 6 week community consultation period and State Investment Committee, state agencies and Cwlth consideration of regional strategy	Investment plan presented	Joint Steering Committee consideration of final strategy (post community consultation) and investment plan	Possible accreditation and release of funds to regional group (timing largely dependent on receipt of investment plan)
Avon	December 2003 - accepted	16 March 2004	1st April 2004	June 2004	June 2004	August - September 2004
Swan	November 2003 - accepted	2 February 2004 - accepted for community consultation phase 13 February	7th April 2004	June 2004	July 2004	September 2004

South West	March 2004 - accepted	12 December 2003 - not accepted for consultation phase. SWCC to present revised draft strategy for review end March.	Late April 2004	End July 2004 (probably a 1 year investment plan)	Mid July 2004	September - October 2004
South Coast	December 2003 - accepted	April 2004	Late April 2004	June/July 2004	July/August 2004	October - November 2004
Northern Agricultural	March 2004 - accepted	June 2004	July 2004	End August 2004	3rd September 2004	November - December 2004
Rangelands*				End June 2005	July 2005	September - October 2005

* The Rangelands will develop a draft strategy (or overview statement?) by 30 June 2004 to inform and guide the sub-regions and the development of the sub-regional strategies.

8.8 STATE WATER QUALITY MANAGEMENT STRATEGY

(Implementation status and proposed changes* as at 15 March 2004)

National water quality management strategy guidelines (1 to 20)	2001/02 scheduled work	2002/03 scheduled work	2003/04 status and changes	Comment
Outline of policies - 1 A reference document - 2 Implementation guidelines - 3	Yes	Yes	Yes	SWQ2 was released in July 2003. All of these components were considered in the preparation of the *State Water Quality Management Strategy (SWQ1, May 2001),* and have also been reflected in *SWQ2,*.
Fresh and marine water quality - 4	Yes	Yes	Yes	SWQ6 was approved by Cabinet and released by Government in the first quarter of 2004. www.epa.wa.gov.au/docs SWQ6 deals with NWQMS guidelines 4 and 7 in WA. Roll out for SWQ6 will take the following format: The Framework will be work shopped within the DOE. The Framework will be work shopped with consultants and industry. This will flow on to the setting of EVs, EQOs and EQC for each of the significant water bodies in WA on a priority basis.
Drinking water summary - 5 Drinking water guidelines - 6	Yes	Yes	Yes*	The Advisory Committee for the Purity of Water (Chaired by the Department of Health) commissioned an assessment of WA's drinking water management and protection practices in relation to implementation of the Australian Drinking Water Guidelines. That report is currently being finalised before the Committee determines how to deal with its findings. The Department of Environment is also preparing a Policy document describing the custom and practice of protecting Public Drinking Water Source Areas. This document is currently only an internal DOE draft and still being completed (extract of main policy issues provided below). A combination of the above documents will then be considered by the Advisory Committee in its

				advice to Government. The above work is an enhancement to and progression of work previously completed and reported to NCC for the ADWG guideline.  DOE POW SA draft POLICY Objects...  DOE POW SA DOE table Objects.doc
Monitoring and reporting - 7	Yes	Yes	Yes	See Guideline 4 above.
Groundwater Protection - 8	Yes	No	No*	The Department of Environment is preparing a document for this guideline subject to availability of resources. This document is not a priority given the system already in place (and consistent with NWQMS) for groundwater management in WA and may be held over to 2004/05. The attached document will form the basis of the implementation plan.  "NWQMS Groundwater Protect
Rural land uses - 9	Yes	No	Yes*	An implementation plan may not be required. However the Department of Environment has prepared a Water Quality Protection Note for this guideline (March 2004).  Rural Land Use Issues NWQMS 9.doc
Urban stormwater - 10	Yes	Yes	Yes	First chapters of the new Stormwater Manual have been approved and are planned to be available on the DOE website by the end of March 2004.
Effluent management - 11	Yes	No	Yes	This guideline represents an overview for all sewerage system guidelines (ie Guideline 11 to 15). As such the work previously

				completed work on this group of guidelines meant a separate implementation plan for Guideline 11 may not be needed. Also in WA effluent management is subject to EPA Licence conditions that consider the NWQMS series of documents. However, in response to a number of related issues a project is being proposed between the Department of Environment and Water Corporation to look at a 'Wastewater Management Framework' (expected timetable for completion of this document is second or third quarter 2004). This project will enhance existing sewerage system processes and practices  in WA.
Trade/industrial waste acceptance - 12	Yes	No	No	No decision to review the existing process is proposed at this time. http://www.watercorporation.com.au/publications/3/IWPUB01.pdf A trade waste document is already in place in WA for acceptance of waste by the Water Corporation of WA.
Biosolids management - 13	No	No	No	An implementation document for this guideline is already in place as previously reported to NCC.http://www.environ.wa.gov.au/downloads/1630_Biosolids.pdf
Reclaimed water - 14	Yes	No	Yes	The Government's State Water Strategy 2003 has considered this issue and deals with grey water recycling and scheme based reclamation and its use for industry, parks, gardens and horticulture. Development of an implementation plan will be considered under this framework. http://www.health.wa.gov.au/search/search.idq?CiMaxRecordsPerPage=5&CiScope=%2F&TemplateName=search&CiSort=write%5Bd%

				5D%2Crank%5Bd%5D&CiRestriction=greywater Open document 2 which is the guideline http://www.ourwaterfuture.com.au/community/statewaterstrategy.asp see section 5 It is noted that a National review of this guideline (or related work) is occurring and WA will keep itself informed regarding the progress of this work.
Sewerage overflows - 15	No	No	No	An implementation document for this guideline is already in place as previously reported to NCC.
Dairy sheds effluent - 16a	Yes	No	No*	A 1998 dairy farm effluent guideline exists. This guideline considered NWQMS outcomes. A review of the existing State guideline will be considered in 2004-05.
Dairy processing plant effluent - 16b	Yes	No	No*	Dairy processing sheds are subject to licensing under the Environmental Protection Act. The licences use NWQMS outcomes in setting conditions to protect water quality. A plan to be considered 2004-05.
Intensive piggeries - 17	Yes	No	No	An implementation document for this guideline is already in place as previously reported to NCC.
Wool scouring and carbonising - 18	Yes	No	No	No implementation Plan is proposed as previously supported by NCC.
Tanning and related industry - 19	Yes	No	No	No implementation plan is proposed as previously supported by NCC.
Wineries and distilleries - 20	No	No	No	No implementation plan is proposed as previously supported by NCC

Source: Water Source Protection Branch S Watson 9278 0454.

9 ATTACHMENT 3: PROGRESS ON NATIONAL ROAD TRANSPORT REFORMS

9.1 SECOND TRANCHE ASSESSMENT FRAMEWORK

Reform Project	Legislation/action required	Current implementation status and change since last report to the NCC
National Heavy Vehicle Registration Scheme National Reform Project 2	To be introduced via amendments to the *Road Traffic Act 1974* and Regulations.	The amending Act was assented to on 21 December 2001. As part of the adoption of the reform's concept of a "registered operator", the Act contains provisions which will introduce the concept of a "responsible person". Significant changes are required to WA Police Service technology and administrative procedures are necessary in respect of speed camera operations before these provisions may commence operation, however in the interim, Western Australia has been able to achieve outcomes which are consistent for the most part with this reform via administrative means.
National Driver Licensing Scheme National Reform Project 3	Introduction of the National Drivers' Licence Classifications and compulsory photographic licences is to be achieved via passage of a Bill to amend the *Road Traffic Act 1974*. The remainder of the Scheme to be introduced via additional amendments to the *Road Traffic Act 1974* and Regulations.	An amending Act was assented to in 2000. Its provisions and supporting regulations commenced operation on 7 May 2001. Drafting of the amendment Bill was suspended pending completion of a licensing functional review to determine, amongst other matters, where administrative responsibility for licensing functions should most appropriately reside. As the determination of these issues would affect the content of the Bill, drafting of the Bill did not resume until completion of the review in March 2003. Approval to print and introduce has been obtained, and it expected that the Road Traffic Amendment Bill 2004 will be introduced to Parliament during the Autumn 2004 session.
Vehicle Operations National Reform Project 4 **Heavy Vehicle**	Introduction of the following national models: Australian Vehicle Standards Rules;	The *Road Traffic Amendment Act 2001* was assented to on 22 December 2001. The supporting amendment regulations

Standards National Reform Project 5	Mass and Loading; Oversize and Overmass Vehicles; and Restricted Access Vehicles; is to be achieved via amendments to the *Road Traffic Act 1974* and Regulations.	commenced operation on 1 November 2002.
One Driver / One Licence National Reform Project 9	To be introduced via amendments to the *Road Traffic Act 1974* and Regulations, contained in the Road Traffic Amendment Bill 2004.	As for "National Driver Licensing Scheme, National Reform Project 3".
Enhanced Safe Carriage and Restraint of Loads National Reform Project 13	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 *Road Traffic Act 1974* are in place.	As for "Vehicle Operations, National Reform Project 4" and "Heavy Vehicle Standards, National Reform Project 5".

9.2 THIRD TRANCHE ASSESSMENT FRAMEWORK

Reform Project	Implementation target	Comments
Combined Vehicle Standards	Already implemented in WA	The *Road Traffic Amendment Act 2001* was assented to on 22 December 2001. The supporting amendment regulations commenced operation on 1 November 2002.
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.
Second Charges Determination	Already implemented in WA	
Axle Mass Increases for Ultra-low Floor Buses	Already implemented in WA	

10 ATTACHMENT 4: PUBLIC INTEREST CASES FOR RETAINING SIGNIFICANT RESTRICTIONS

10.1 PEARL OYSTER HATCHERY POLICY

10.1.1 Background

The Western Australian pearling legislation was reviewed by the Centre for International Economics (CIE) on behalf of the WA State Government in accordance with NCP principles. CIE made 10 recommendations overall.

The WA State government, in a statement in March 2002, adopted in most part the CIE recommendations. The WA Government did not adopt the CIE recommendation to remove hatchery quotas.

The NCC has assessed that WA has not adequately fulfilled its obligations under the Competition Policy Agreement (CPA) in relation to the *Pearling Act 1990*. Specifically-

- the Government has not provided sufficient evidence for continuing to restrict the hatchery production of pearl shell via hatchery quota until at least December 2005 when the current policy expires; and
- other reforms recommended in November 1999 will not be legislated until 2004 at the earliest.

This document does not include a further public interest test with respect to the hatchery policy as this work has already been undertaken on two separate occasions – once by CIE and once by ACIL. The document does however attempt to context the WA Government's decision to retain the hatchery quota framework, to provide information on current pearl market conditions and to provide advice on Government's future directions with respect to regulation.

10.1.2 The CIE Assessment

CIE undertook a public interest test in accordance with the NCP legislative review guidelines.

CIE recommended that "…..*the hatchery options/quota system be removed without delay*."

CIE, reported their overall assessment as:

> *Taking all factors into account, the review concludes that a clear demonstrable net public benefit …from retaining the hatchery policy, has not been demonstrated. But neither is it clear that there are demonstrable and significant public benefit gains from removing hatchery quotas.* ***In this difficult borderline situation*** *…restrictions should be removed…"* (CIE report, November 1999, p.122,123).

10.1.3 The ACIL Assessment

ACIL undertook a separate public interest test which formed the basis of a submission by the Pearl Producers Association to the NCP review process. ACIL used the econometric model approach recommended by CIE.

The evidence presented by ACIL pointed to the hatchery policy constraining the ability of producers to produce pearls with corresponding benefit in holding up prices in the market. ACIL estimated that the intervention had resulted in a continuing net benefit to the community of up to $21 million per annum.

The ACIL study included, among other things, analysis of market research which had been designed, in large part, to provide valid data in the competition policy context. This market research was undertaken by the professional market research company, Market Equity, in liaison with ACIL.

The Market Equity study is the most extensive market research ever undertaken into the international pearl market.

- It dealt with the market at two levels; at a wholesaler level and at a consumer level.
- The study included intensive interviewing of a large sample of international traders in pearls of all origins.
- It did close consumer research in a major North American market.

- The findings of the Market Equity work clearly demonstrated the following important facts:
  - That the significantly higher quality of Australian pearls was recognised by the market.
  - This differentiation translates into higher prices.
  - They concluded from their analysis that the existing market power would steadily be eroded at higher levels of production, while public benefit would not be optimal at significantly lower levels of production.
  - There is an expectations effect within the wholesale arena which may result in price downward pressure should announcements be made to significantly increase production without linkage to market demand.

10.1.4 Key Differences

The key differences between the CIE analysis and ACIL analysis can be summarised as follows-

Assessment of Net Public Benefits

ACIL estimated the net public benefit associated with hatchery quotas to be significant (between $16 million and $21 million).

CIE was unconvinced and doubted the validity of the model (recommended by CIE) used by ACIL in estimating net public benefits. However, CIE described the issue as a "difficult borderline situation" and indicated the lack of a strong case either way.

'Expectations Effect'

ACIL argued that the demand curve for Australian South Sea pearls would fall because consumers' perception of such pearls as rare and scarce would be eroded in response to any decision taken to remove hatchery quotas. This argument was supported by Market Equity market research of wholesalers.

CIE's view was that any such response would be essentially a short term phenomenon. No analysis was carried out to support this position.

Alternative Means of Obtaining the Outcomes

ACIL argued that, although it is market factors and not hatchery quotas that are currently determining supply, the existence of Government hatchery quotas reinforces market perceptions of Australian South Sea pearls being rare and scarce.

CIE was of the view that the markets perception relating to the rarity and scarcity of Australian South Sea pearls and to the extent of possible supply responses due to a regulatory change could be conditioned by an industry-run market education and public awareness campaigns.

10.1.5 State Government Response

Faced with irreconcilable differences of expert opinion, the State applied the precautionary principle and decided that the hatchery options policy would remain in place as originally agreed until the end of December 2005.

Government considered the CIE recommendation and found its case inadequate on several critically important issues including:

On the Demand Side

CIE dismisses the only credible data (from Market Equity research) that exists demonstrating that Western Australian producers have and can exercise market power (ie. price responds to supply changes);

While conceding that market power exists, CIE dismisses the straightforward economic theory (that they recommended be applied) that demonstrates unequivocally that by constraining supply, net economic benefits result provided the benefits to Australian producers outweigh the costs to Australian consumers (the latter are negligible as almost all pearls are sold overseas);

CIE dismisses the only credible data (from Market Equity research) that exists demonstrating that the 'expectations effect' operates in the world market place (whereby current demand drops on the basis of expectations of buyers of future supply increases);

CIE fails to produce any evidence to support its contention that demand does not respond to the 'expectations effect'.

On the Supply Side

As it did with demand data, CIE dismisses the only credible data that exists demonstrating that the hatchery policy constrains Western Australian producers' capacity to supply pearls (growth of Australian supply was in the order of 14-18%);

CIE fails to produce evidence to support its contrary contention;

CIE dismisses credible evidence supplied by the Department of Fisheries and the Department of Transport demonstrating that supply is not constrained by a shortage of potential pearl farm lease sites along the WA coast (arguably this is a function of cost, quality of pearl production and stocking density).

On the Net Benefits Resulting from the Hatchery Policy

Because of its interpretations of the features of both 'demand and supply functions' and the only credible data made available, CIE dismisses the ACIL model constructed of the market for Australian South Sea pearls that was used to estimate the $21 million annual net benefit arising from the hatchery policy.

CIE did not produce evidence to support its contrary contention.

10.1.6 Current Market Situation

Australia's key competitors in the south sea pearl market are Indonesia and the Philippines

The bulk of Indonesian pearl production does not compete directly with Australian produced pearls.

The principal area of competition is at the lower/medium level of production of quality for Australian goods. This level of overlap is possibly 25 – 33% of Australian production and occurs at the medium to lower price end of Australia's production.

Australia can consistently produce quality pearls of grades that Indonesia has been unable to produce. Australian goods in these grades on average sell for double the price of Indonesian goods. This representation of prices excludes those Australian goods which are value added (more valuable pearls) outside the auction market and is likely to strongly underestimate the price differentials. The WA quota framework has encouraged best practice and research producing a further competitive edge.

The prices of lower grades of pearls have been downwardly impacted in the current market to a much greater extent than the quality end of the market. The market is thought to have stabilised and is likely to improve during 2004.

The risk of Indonesia increasing its quality portion of production is thought to be low due to predation of shell forcing farmers to harvest shell at 12-16 months as against the standard 24 months in Australia. This means far less coating of nacre and therefore smaller and less lustrous pearls. In addition, Indonesia has no wildstock fishery any more and is therefore using hatchery reared shell as broodstock. This leads to inbreeding and inferior shell as has been the case in Japan. High quality Western Australian pearls continue to attract premium prices, which have stabilised, despite other recent pressures including SARS etc.

The major risk for Australian producers from increasing supply by Indonesia and the Philippines is likely to drive from the substitution effect of buyers purchasing cheaper lower quality goods placing downward pressure on the better quality high priced goods. Recent history indicates price impact has been greater on Indonesian produced pearls rather than the quality end of the Australian market. Pearls from Indonesia and the Philippines are also primarily cream, yellow and gold and not white as per Australia.

Prospectively, noting recent trends and comments made by Indonesian producers, further expansion of Indonesian and Filipino (Philippines) production beyond 1000 kans to say 1500 kans remains problematic.

10.1.7 The Quota System

Australian production has increased by over 1400% under the quota management system since 1990 - faster than the growth of Indonesia and the Philippines.

The key to the proper management of this production has been that it has increased in line with market demand requirements, maintenance of highest quality and thus prices have been maintained at viable levels.

One of the major benefits of the quota system is that it has provided the incentive for Australian producers to maximise value from their quota.

- For this reason they have focussed on improving the quality of the Australian product and the technology to produce it.
- This has led to major advances in quality improvement and in techniques to undertake multiple pearl production through re-seeding of the same oyster over several years.
- This has put the Australian product at the top of the market in terms of quality and price.
- Producers can take advantage of carefully selecting the best grow-out sites in the unique pristine waters and conditions found in the North West of Australia. Grow out technology has also developed to allow access to new sites.

This contrasts with Australia's competitors, who despite being able to produce any number of hatchery shell product:

- have been unable to reproduce Australia's quality in any number.
- do not have the pristine waters and conditions generally found in the North West of Australia which lend themselves to higher quality.
- often take a more immediate satisfactory financial outcome for themselves by accepting lower quality and commensurate prices thus the quantity of production required is certainly a factor.

The overall result of this difference is that Australian pearls have enjoyed the competitive advantage through constraining production and targeting the quality end of the market.

A quota framework clearly drives industry towards quality production and promotes efficiency. No other regulatory mechanism can achieve this.

It should be not be forgotten that this is a jewellery item in its ultimate form. A product bought for its beauty. The WA Government is correctly focussing production on this.

If the quota framework was to be removed, the potential exists for Australian producers to increase volume of production at the expense of quality. In these circumstances, Australian producers would be unlikely to be able to compete on a cost basis at the lower quality market level with overseas competitors.

Among other things, de-regulation of the hatchery sector would damage the end market for pearls.

- To date, although wholesale prices have been under pressure, there is growing demand at a retail level and little sign of major price erosion or lack of confidence in the product.
- Prices at a wholesale level can fluctuate, ie low prices today can return to higher prices tomorrow. Inconsistency breeds lack of confidence (eg Tahiti).
- When prices in luxury goods fall at a retail level, this affects consumer confidence, meaning prices are much less likely to recover.
- These considerations are another piece in the jigsaw building to the government's decision to retain the quota system.

It must be borne in mind, this is a product with no integral or objective value – it is all in perceptions.

It is also part of the international luxury goods market, where not only perceptions of the product, but those of its 'rarity', are vital.

For this reason the 'expectation effect' of a quota system on the marketing chain is important. With quotas, the marketing chain can have some level of confidence in buying stock without the threat of the market being flooded. They have no such confidence without a visible production control system. This is evidenced in Tahiti where prices fell massively in a deregulated environment but have recently rebounded 20% since regulation was re-introduced 2 years ago. This has reduced overall supply and improved buyers confidence in the Tahitian industry, and prices have increased correspondingly.

To maintain quality and their position in the world market, Australian producers must also expand demand. This will be achieved by market development and appellation, including certification.

Government will work with industry on the introduction of a certification program. The decision to grant additional quota in the future will need to be linked to a capacity to continue to produce quality pearls and maximise demand.

Production costs in competitor countries in the labour intensive pearling industry are inherently and significantly lower. In these circumstances, Australian producers are successful in international markets because they hold market power through producing a differentiated product valued by the market. Conversely, Australian producers would be unable to compete if forced into the same market by deregulation.

10.1.8 Current Government Actions

The WA Government supports the quota based system because of the nature of the international pearl market. The Government has never said that the current quota level is fixed forever. Government is putting in place formal mechanisms to allow the quota to be managed, including review, in response to demand pressure and the success of market differentiation programs.

The Government intends to introduce a new Pearling Act which will more transparently set out rights and responsibilities of the industry and support the continuation of the hatchery quota. The new legislation will establish the means by which current quota levels can be reviewed, new quota can be added from time to time based on a formal assessment that the resulting production can be absorbed by the market without destabilising prices. The new pearling legislation will also deal with the balance of matters arising from the pearling NCP review. Drafting instructions for the new legislation are substantially complete with a view to introduction to Parliament in Autumn 2005 and passage in Spring 2005.

In addition, the Government has always been committed to review of the hatchery policy by the end of 2005, necessary because the existing policy expires at that time. This review is underway and will include an examination of relevant factors around the adequacy of the current quota levels, creation of additional hatchery quota and on options for managing and allocating new hatchery quota.

Any future increase in the total number of allocated hatchery quota shell will be based on sensitivity to global market demand. Government is working now to establish a methodology to test demand pressure on an ongoing basis.

The Government is also monitoring industry promotion to ensure that sufficient effort is being expended to maintain Australia's competitive advantage and considering mechanisms to expand demand.

Market appellation through certification, improving quality of pearls produced and market value adding approaches, or reducing costs through collaborative marketing and producing arrangements, continue to be key elements in Australian producers maintaining their competitive position.

10.1.9 Other Matters relating to 2003 NCC Assessment

The NCC states in its 2003 assessment that "the volume of hatchery-produced oysters is limited by individual transferable quota (known as hatchery quota/options)".

This statement is incorrect. The volume of hatchery-produced oysters is unlimited but the number allowed to be seeded in any one year is limited. As outlined above, the quota level is not fixed and is variable at Government discretion, subject to the development of formal mechanisms to determine adjustments to the quota level.

The NCC also states that "hatchery-produced oysters must not be greater than 40 millimetres when sold to pearl farms; otherwise, they are deemed to be wildstock and subject to wildstock quota".

It should be noted that this requirement only relates to hatchery options to ensure that grow out technology was developed by all producers. That was the express aim of the hatchery policy and has been achieved. The restriction no longer applies as producers have converted options to quota.

The NCC states that "hatchery regulation may be the more risky course if it hinders Australian producers (other than the dominant few) from achieving scale economies ….".

This comment ignores the market reality that there is no barrier to anyone improving their economies of scale by purchasing quota and/or licences given these are fully tradeable. In other managed fisheries/industries, operators without viable production entitlements use the market to resolve their problems usually by buying more entitlements or departing the industry, or combining with other operators. Pearling should not be considered differently. It should also be noted that none of the existing smaller producers have argued for total de-regulation of the hatchery sector.

The NCC refers to the ACIL commentary in its 1999 NCP submission that there are non-regulatory factors (farm sites, technology development etc) that impact supply and hence quotas are not binding (and presumably not needed). The NCC goes on to argue that if the real constraints are non-regulatory then apart from a short term "expectations effect" impact on prices, pearl production will find the appropriate market level (without quota intervention).

This has been misunderstood. The aim of the quota framework has not been to cap but to manage supply. Future supply adjustments need to be made in line with market demand adjustments. This can be achieved by quota.

The NCC states that the WA Government's decision to retain hatchery quotas relies on a Pearl Producers Association submission to the NCP review of the ACT (ie ACIL).

This statement is not correct. The State Government position was formed after considering an extensive set of information including, but not limited to, the ACIL submission.

10.1.10 NCC Penalty

The NCC in describing its 2003 NCP assessment outcomes and penalties states, among other things that:

> "the significance of an individual compliance failure reflects an array of considerations, including ……. the relative importance of a compliance breach in terms of its impacts on the community (emphasis added) and economy ……. some restrictions on competition ….. result in financial transfers to incumbent beneficiaries at the expense of potential competitors and, most importantly, consumers (emphasis added)….."

With specific reference to pearling, given the nature of the industry and that pearls are marketed almost exclusively offshore, one could argue that the current quota restriction is having little, if any, impact on the "community" and on "consumers" and that this should be considered when identifying the relative importance of the compliance breach (if any). The quantum effect on the Australian economy is negligible.

10.1.11 Summary

The hatchery policy has been subject to separate scrutiny by two respected, independent, professional organisations - CIE on behalf of the WA Government and ACIL on behalf of the Pearl Producers Association.

The two are in significant disagreement on aspects of the hatchery policy and its economic implications to the State.

Whilst CIE recommended removal of hatchery quotas it described the issue as a "difficult borderline situation" and indicated the lack of a strong case either way.

ACIL's strong view supported a retention of a hatchery quota policy based on a demonstrated significant net public benefit.

Whilst it is acknowledged that the NCP presumption in favour of competition prevails in "borderline" situations, the risk was considered too great by the WA Government. Given the risk and without a clear case that the public benefits of deregulation exceed the costs, the WA Government took the position that the hatchery policy should remain in place until the end of 2005. Furthermore, the Government did not limit its considerations to pure economic theory but looked at all issues. A key driver to retaining quotas is the very positive effect quota has on focussing Australian producers on quality production, which is of primary importance when considering that the end product is sold into the luxury goods markets of the world.

The WA Government fully supports the need, and is committed to, review of the pearl oyster hatchery policy with a view to increasing quota where justified in line with market demand adjustments. This issue is currently being given consideration, as part of the policy review in the lead up to expiry of the current policy in December 2005.

The WA Government does not support total removal of the quota framework. Nor is this supported by existing licence holders, including those seeking the grant of additional quota in the short term.

A quota framework clearly drives the incentive within industry towards quality production. No other regulatory mechanism can achieve this. Quality must continue to be the focus of Australian producers.

Market research and the econometric analysis to date clearly indicate that-

- The Australian pearl can be sufficiently differentiated for it to be able to influence prices through manipulating supply.
- The Australian pearl occupies the quality end of the market and there is overlap only at the bottom end of the Australian quality and size range.
- That while there is some substitutability between pearls of different quality and origins, this is limited.
- The public benefit from quotas is substantial. ACIL calculated this benefit at around $20 million per annum, based upon their measurements of supply/demand elasticity.

Market appellation and certification will be important components of future management arrangements.

The current position taken by Government is considered to be a balanced one in the best interests of industry and the community.

The impact of the restriction, when assessed against the NCC's own criteria for penalties, is likely to be negligible to the Australian community and to consumers.

10.2 WESTERN ROCK LOBSTER MANAGEMENT

10.2.1 Background

Having reviewed fisheries legislation in WA, as required by the Commonwealth Government's NCP, the Western Australian Government has made a commitment to review the management arrangements in place for the West Coast Rock Lobster Managed Fishery (the Fishery). Specifically Government has stated:

> *The current input based management regime for the Western Rock Lobster Fishery remain in place until at least December 2006 with the Department of Fisheries and the Rock Lobster Industry Advisory Committee to review and quantify any further efficiency gains from additional changes to the current regulatory regime including the costs and risks of management failure, over the next 2-3 years.*

The basis for this position is that moving the Fishery to an output system of management represents a major change both practically and in the minds of stakeholders. Furthermore, while the perceived benefits of an output management system are often discussed it is important to note that the transition of a fishery such as this from an input to an output system does not come without risk.

The Government has specifically identified management failure associated with non-compliance as the largest risk. This judgement is made against a background of serious non-compliance in the fishery during the 1960's and early 1970's including serious over potting and breaches in illegal undersize sale of lobsters. Illegal sales in this period exceeded 10% of the value of the fishery. However, other risks include the possibility that management change could result in a significant shift in industry behaviour with unforseen and negative effects on regional communities that are unprepared or unable to keep pace with the rate of change.

Before exposing the fishery, industry and related communities to real but as yet unquantified risks the Government has taken the sensible approach of detailing a review process with a clear timeframe and terms of reference to ensure that it knows with some certainty what system of management is most consistent with the NCP principles in an overall Ecologically Sustainable Development (ESD) framework.

In response, the NCC has indicated it is not convinced that these risks are material or at least significant enough to justify not moving to an output system of management more rapidly than could be the case under the State Government process. The NCC has argued that the extended review process creates uncertainty and acts as a disincentive for investors.

10.2.2 Considerations behind the State Government Position

Risk of Management Failure

The management arrangements in place for the West Coast Rock Lobster Fishery have been lauded around the world as best practice fisheries management - for example it is the world's first fishery to be certified by the Marine Stewardship Council. Because of the fishery's solid foundations (i.e. long-term resource sustainability) it continues to attract investment in infrastructure, technology and personnel while also providing the impetus for the development of some significant Western Australian industries such as shipbuilding.

In this context it is clear that the current management regime is allowing economic and social benefits to flow to the community while maintaining the ecological processes upon which life depends - as required by the *Fish Resources Management Act 1994* (FRMA) (see section 3). To facilitate economic adjustment in this fishery there has been a gradual relaxation of rules controlling boat sizes, transfer policies for units of gear (pots) and the removal of total pot restrictions. This has facilitated an adjustment in fleet size from 830 to 530 boats today.

By Australian and indeed world standards the Fishery's achievements are enviable.

In this instance the *risk of management failure* is the risk that it is not possible to manage non-compliance under an output system with available resources in the short to mid term and that causes the stock status to become unsustainable. In addition to the obvious environmental implications, such an outcome would instantly: undermine the value of assets in the Fishery (including access rights and infrastructure); and jeopardise access to key overseas markets through the potential loss of accreditation under the *Environment Protection and Biodiversity Conservation Act 1999*.

It must also be acknowledged that there is a significant recreational fishery for western rock lobster. Management failure for the commercial fishery equals management failure for the recreational fishery.

If accepted risk assessment techniques are applied, (i.e. assessment of risk based on consequence and likelihood) it is fair to say that the consequence of the risk of management failure being realised is catastrophic while the likelihood remains at least to some extent unknown.

In the meantime the Government knows from the 1993/94 review of the input based management system against alternatives, such as output management when industry clearly rejected the notion of quota management in the fishery, that the primary driver of industry profitability has been and will continue to be fleet size rationalisation (setting aside currency issues). The recent decision to remove the maximum entitlement holding rule - the 150 pot rule - removes the final legislative barrier to fleet size rationalisation.

The nature of the input system itself has also driven competition and indirectly ensured profit distribution remained in the catching sector maximising benefits for Western Australia. To date, the major part of ownership and profit distribution for this fishery remains in Australian hands. This cannot be guaranteed under quota.

Cost of Management

If the Government were to move immediately to an output system of management with no further information than is currently available it would have to adopt a position that the prospect of management failure is unacceptable and therefore put in place a draconian and highly expensive fisheries compliance program to ensure there is not a system failure.

This Fishery has an average yearly catch of 11,000,000 kilograms landed over a coastline that extends from North West Cape in the north to Cape Leeuwin in the south. This coast contains numerous anchorages, harbours, bays, inlets etc that already are or could be used to land lobster. Clearly a compliance system designed to give some certainty to an allocated totally allowable commercial catch (TACC) in Western Australia has challenges beyond those facing South Australian, Tasmanian, Victorian or New South Wales lobster fisheries whose combined average annual catch is less than the West Australian catch.

Without fully understanding the nature of the risk of management failure and accepting that it cannot be allowed to occur, the cost and presence of the necessary compliance program would significantly limit the extent to which any of the perceived benefits of an output system could be realised.

Changes to Regional Communities

The FRMA lists as one of its objects the need to provide optimum social benefits to the Western Australian community from the use of fish resources. Similarly the nationally accepted definition of ESD includes a balance of environmental, economic and social objectives.

This Fishery is based in regional Western Australia, and in many cases the communities that exist on the mid-west coast owe their beginnings to the Fishery. That said, each community has evolved in response to different sets of stimuli and therefore have quite different economies and social structures and therefore different sensitivities and abilities to cope with change and the rate at which that change occurs.

Given the clear mandate in fisheries management and NCP (through the public interest test) to deal with the sociological issues it is important to have an understanding as to what effect the change in industry behaviour under a output system will have on regional communities. Such knowledge will enable Government to ascertain the detail of change (if it is to occur) and the need for other targeted measures to compensate for the effect of quite rapid change on communities with low resilience to change.

Importance of Partnerships in Fisheries Management

The Department of Fisheries currently has an excellent working partnership with the fishing industry that provides many benefits. In particular, industry compliance with the management rules is exceptionally high and industry is the source of a detailed fisheries data set that has a long time series and high resolving power both with respect to space and time. In return there is a not unreasonable expectation that industry is consulted and directly involved in the management process.

Should Government make a decision to implement a new system of management without having brought industry along in the process to reach that decision, then it is highly likely that the existing good will would evaporate. In particular introducing significant change without having firstly conducted a full and independent review in liaison with stakeholders would shift the focus from core business to dealing with: legal challenges and general revolt against the new measures, compliance with them and cooperation with vital research and monitoring exercises that are conducted in partnership with industry.

Timing of a New Review Process

The timing of the review for decision in 2006 is against the background of a major review (including the option of introducing quotas) conducted in the early 1990's (1991 to 1993). The quota option was strongly rejected by Government and industry as the benefits from quota management were not convincing. Against that background, Government was not prepared to commence another major review of the fishery until a full understanding of the 1993/94 new input based management package had been reached. The current process underway for review (reported later) again timetables a further major re-evaluation of alternative management approaches including quotas for the rock lobster fishery.

10.2.3 Details of the Review Process

Government is committed to a review of the management framework of the fishery by 2006. The review has three phases.

Phase 1

The Department of Fisheries and Western Rock Lobster Industry recognise that all the expertise and experience required to undertake a review of this scope is not currently contained "in house". Therefore a budget has been developed and a process commenced to select an appropriate consultant.

The task of the consultant engaged for this purpose will be to produce a written report for the Rock Lobster Industry Advisory Committee (RLIAC) that details results from analysis of an interactive and integrated cost benefit model capable of identifying and quantifying material differences in the costs and benefits of alternate fisheries management approaches for the commercial fishery.

To produce this report the consultant will need to manage input and data from other relevant experts not limited to the Department of Fisheries and Western Rock Lobster industry.

The management approaches or variables that need to be tested are:

- The management system as it stands today (*status quo*).
- A more advanced Individually Transferable Effort (ITE) management system that enables the manipulation of total effort within the fishing season.
- A Individually Transferable Quota (ITQ) management system that includes analysis of:
  - a constant Total Allowable Commercial Catch;
  - a variable Total Allowable Commercial Catch set on sustainability grounds only; and
  - a variable Total Allowable Commercial Catch set on sustainability grounds with a tonnage range to minimise large inter-annual fluctuations in product supply to the market.

A more detailed description of the management scenarios is at Appendix 1.

The report will focus on identifying material, as opposed to trivial, costs and benefits associated with each of the scenarios.

It is critically important that the assessment tool be interactive and capable of assessing the effect of change in key areas of interest such as fleet size, fleet distribution, concentration of ownership, wealth distribution and changes in the fishery's capacity (i.e. pot numbers or total catch).

To ensure that the report is written in an ESD framework, the interactive tool will integrate information across different disciplines. In particular the cost benefit analysis must consider economic, market and social issues based on current understanding of the western rock lobster and its environment.

Given the success of management initiatives under the current system in ensuring resource sustainability and noting that a system that is unable to deliver the same high standard is not acceptable, the review will focus on material economic, market and social costs and benefits. In particular, the assessment will cover the following points:

- Cost of production, identification of economic opportunities and changes in wealth distribution patterns that could be realised under alternate management systems. Furthermore consideration will be given to cost of fisheries management - including an assessment of the risk of biological or management failure under each scenario.

- Potential and likely market development or market advantage opportunities under alternate management systems beyond what could occur under the existing system.

- Predictions of the behaviour of industry under each of the management scenarios and therefore the potential and likely social impacts of the expected responses on existing host communities.

In each of these areas of interest it will be important to understand and gain knowledge from the experience in other comparable fisheries where there has been significant management change, for example New Zealand, South Australia, Tasmania and Victoria. This understanding will extend through all levels of industry and relevant government management agencies.

A process to gather this information has already commenced.

Phase 2

With the various studies complete and published the second phase will commence in July 2005.

The sole purpose of phase 2 is to communicate with stakeholders (primarily industry) as to what the objective and independent analysis of the three management scenarios is saying.

The communication process will be based around a series of workshop sessions with professional fishermen's associations and other interested parties. It is desirable that someone who understands fisheries management issues and is independent of both the Department and the industry facilitate these workshops.

Phase 3

At the commencement of the third phase stakeholders will have been exposed to numerous education and awareness processes based around the independent report. At this point stakeholders should be in a position to express their views on where the true strengths and weaknesses of the three management scenarios lie and on balance which is the best option.

In this period RLIAC will receive submissions and engage with stakeholders to clarify positions and bring together the combination of stakeholder submissions and the independent study to develop advice to Government. RLIAC will continue to communicate with stakeholders throughout this period to ensure its understanding of the respective stakeholder positions are well understood.

By October 2006, RLIAC will be in a position to formally communicate the substance of the committee's intended advice to Government on the annual coastal tour before formally presenting this advice. This final step provides further transparency for the process and the opportunity for RLIAC to ensure its assessment of the respective scenarios has properly accounted for the various views and is on balance the best advice.

Current Status

The Minister Fisheries has produced and released a public document that describes in detail the process and terms of reference (including specific objectives) for the strategic review of the management arrangements for the Fishery.

The Department of Fisheries has produced a tender document with the intention of hiring a consultant to project manage the analysis and produce the report as required by Phase 1 of the process.

The Department of Fisheries has entered into an agreement with the other expertise-based providers associated with Phase 1 of the process.

The Department of Fisheries has met with and established lines of communication with relevant industry and government representatives in South Australia, Victoria, Tasmania and New Zealand and will be conducting formal data and information gathering processes from these jurisdictions before July 2004.

10.2.4 Summary

The current management system in place for the West Coast Rock Lobster Fishery has been successful in achieving its primary objective - maintaining resource sustainability upon which a vibrant and valuable industry is based.

The fishery is producing considerable social and economic benefits to the community, regional Western Australia and to associated industries.

The State Government will not entertain the risk of management failure materialising by ideology or through inadequate examination.

It is counter intuitive to rush the implementation of a new system with unproven benefits while knowing that there will need to be significant costs and undermining of the good relationship with industry.

It is important to understand the effects of change in the community context so as to strike a balance and ensure there is a net increase in benefits.

The WA Government has designed a comprehensive and targeted process that has already commenced to investigate what system of management will provide the best net benefit to the community in an ecologically sustainable context. The timelines have been set as a result of a previous review in the early 1990's, rejecting the introduction of quotas and implementing major management shifts to effectively address arising concerns for breeding stock levels at that time. The process for further review for decision at the end of 2006 (a part of the State's NCP review outcomes) has been made based on a deliberative, careful and informed timetable backed by well informed research and full knowledge of the outcomes and consequences flowing from the major management changes made in the 1993/94 season.

The WA Government does not believe the timetable for the review is unreasonable and therefore suspension penalties ought not to apply given the substantial background to considerations and alternative approaches to management for this fishery. There has not been market failure in the management of this fishery.

10.2.5 Appendix 1: Management Scenarios to be Considered

There are three management scenarios that need to be equally assessed side by side noting that there is potential for the scenarios to be varied with the inclusion of greater detail as required. Copies of the *Fish Resources Management Act 1994, Fish Resources Management Regulations 1995* and the West Coast Rock Lobster Managed Fishery (WCRL) Managed Plan are available online at www.wa.gov.au/westfish <http://www.wa.gov.au/westfish> . A description of the scenarios follows.

Current management system or status quo

The system we have today. Limits the number of pots that can be fished in each zone, a range of biological controls and a limited season. It needs to be recognised that this system does provide scope for further fleet rationalisation with the recent removal of the maximum holding provision (150 pot rule) and the ability to reduce the fishery's capacity or number of usable pots.

Access

- requires a WCRL Managed Fishery Licence (MFL) with minimum number of units of entitlement attached (currently minimum is 63);
- the number of units associated with an MFL determines the quantity of gear that can be used under the authority of that MFL;
- individual units can be freely traded;
- MFLs are zone specific, i.e. they provide access to Zone A, B or C. A single MFL cannot provide access to more than one Zone;
- the number of WCRL fishing platforms (i.e. vessels with MFLs) is not fixed, with the ability to both create new MFLs within overall capacity and retire existing MFLs for an unspecified period of time; and
- MFLs need to be renewed at the end of each 12-month licensing period; the FRMA creates an expectation of renewal.

Sustainability

- the management plan explicitly limits the number of pots for Zones A/B combined and Zone C - the capacity of the fishery as a whole is the sum of the Zone A/B and Zone C capacities
- the capacity can be increased or decreased by the Minister for Fisheries and a change in the value of capacity will have a consequential effect on the unit value which determines how many pots each licence is authorised to use
- the capacities of Zone A/B and Zone C are independent of each other therefore the Minister could adjust both capacities or adjust one independent of the other
- there are regulations that prohibit the taking of lobsters below a minimum size, above a maximum size (females only) and while in breeding condition
- dimensions of pots are prescribed as are the use of escape gaps to prevent unnecessary handling of undersize animals

Seasons

- fishing season runs from 15 November to 30 June of the following year

- access to the Big Bank region (for those who nominate) commences on 10 February

- the A Zone fishery commences on 15 March to 30 June

An Individually Transferable Effort (ITE) Management System

An input system of management that would not have an off season but rather unitise the fishery's capacity both with respect to number of days and number of pots. This would allow fishing time and effort to be used at its most efficient within a twelve-month period based on the choice of individual operators. Recognising that the catchability of lobsters is variable throughout the year the modelling of this option needs to consider variations on how the total effort is distributed throughout the season against known costs of production and market conditions to determine the potential change in net worth that could result under this system.

A further variation would be the principle upon which Total Allowable Effort is set. Specifically this would allow the Total Allowable Effort to be set:

- on sustainability needs alone or

- on sustainability needs with a specified range to limit inter-annual variations in production.

Access

- requires a West Coast Rock Lobster Managed Fishery Licence (MFL) with minimum (not necessarily 63) number of units of entitlement attached

- the number of units associated with an MFL determines the quantity of gear and the number of days access that are provided under the authority of that MFL

- individual units can be freely traded

- MFLs are zone specific, i.e. they provide access to Zone A, B or C, a single MFL cannot provide access to more than one Zone

- the number of WCRL fishing platforms (i.e. vessels with MFLs) is not fixed with the ability to both create new MFLs within overall capacity and retire existing MFLs for an unspecified period of time

- MFLs need to be renewed at the end of each 12 month licensing period, the *Fish Resources Management Act 1994* creates an expectation of renewal

Sustainability

- the management plan explicitly limits the number of pots and the number of fishing days for Zone A, Zone B and Zone C - the capacity of the fishery as a whole is the sum of the Zone A, B and C capacities

- the capacity can be increased or decreased by the Minister for Fisheries and a change in the value of capacity will have a consequential effect on the unit value which determines how many pots and days access each licence is authorised to use

- the capacities of Zone A, B and C are independent of each other, therefore the Minister could adjust all capacities or adjust one independent of the others

- there are regulations that prohibit the taking of lobsters below a minimum size, above a maximum size (females only) and while in breeding condition

- dimensions of pots are prescribed, as are the use of escape gaps to prevent unnecessary handling of undersize animals

- a Vessel Monitoring System is essential to log the number of pot / days for individuals and for the fishery as a whole

- downward adjustments in capacity are likely for a number seasons following management system implementation to account for increased efficiency as effort gravitates to those times that provide the greatest net worth

Seasons

- fishing can occur at any time of the year with the possibility of a small closed season if desired

- distribution of effort under this scenario should contemplate a complete shift of effort out of the whites fishing period (15 November to 31 January)

An Individually Transferable Quota System

A system whereby units have a value in kilograms of lobster that can be taken and the unit value equates to a Total Allowable Commercial Catch and biological controls remain to ensure the breeding stock is not selectively targeted. A system that has the potential to provide the greatest freedom to operators in terms of when they choose to harvest their share of the catch.

Modelling of this management system needs to identify whether variations in the Total Allowable Commercial Catch setting processes produce a different mix of costs and benefits. In particular are there material differences between the following processes:

- a constant but environmentally conservative Total Allowable Commercial Catch;

- a variable Total Allowable Commercial Catch set on sustainability grounds only; and

- a variable Total Allowable Commercial Catch set on sustainability grounds with a tonnage range to minimise large inter-annual fluctuations in product supply to the market.

NB: Setting a *Total Allowable Commercial Catch* will also require due consideration of what the *Total Allowable Catch* should be. However, for the purpose of this exercise it can be assumed that an appropriate sharing of the resource between commercial and recreational fishers exists.

Access

- requires a WCRL Managed Fishery Licence with minimum number (not yet quantified) of units of entitlement attached

- the number of units associated with an MFL determines the quantity of lobster (kg) that can be caught in a licence period under the authority of that MFL

- individual units can be freely traded

- MFLs are zone specific, i.e. they provide access to Zone A, B or C, a single MFL cannot provide access to more than one Zone

- the number of WCRL fishing platforms (i.e. vessels with MFL) is not fixed with the ability to both create new MFLs within overall capacity and retire existing MFLs for an unspecified period of time

- MFLs need to be renewed at the end of each 12 month licensing period, the FRMA creates an expectation of renewal

Sustainability

- the management plan explicitly limits the total allowable commercial catch (capacity) for a 12 month licence period in Zones A, B and C - the capacity of the fishery as a whole is the sum of the Zone A, B and C capacities

- the capacity can be increased or decreased by the Minister for Fisheries and a change in the value of capacity will have a consequential effect on the unit value which determines how many kilograms each licence is authorised to take

- the capacities of Zone A, B and C are independent of each other therefore the Minister could adjust all capacities or adjust one independent of the others

- there are regulations that prohibit the taking of lobsters below a minimum size, above a maximum size (females only) and while in breeding condition

- the use of escape gaps to prevent unnecessary handling of undersize animals is mandatory

- compliance strategies and tools need to adapt to ensure fishery does not under report catch

- research indicators may need to adapt to account for high grading

Seasons

- fishing can occur at any time of the year with the possibility of a small closed season if desired.

10.3 REGULATION OF PROCESSING ROCK LOBSTER FOR EXPORT

10.3.1 Background

Having reviewed fisheries legislation in WA, as required by the Commonwealth Government's NCP, the Western Australian Government has made decisions regarding the immediate future of regulation of rock lobster processing licences. Noting that for an extended period of time there has been a tiered system in place - one that allows product to be exported and a second that does not - the Government has stated:

The current regulatory framework pertaining to the granting and control of licences classified as "unrestricted" be retained and reviewed in 2006 once the potential costs and risks of deregulation are better understood by both the Government and the industry itself.

The regulatory framework pertinent to the current holders of "restricted" licences be amended so as to allow for the issue of a new class of domestic (ie. Australian market) processing licence. The new class of domestic licences to be issued to all applicants deemed to be "fit and proper" with no cap on the number of licences to be issued provided all conditions are met.

The Government's position on regulation of rock lobster processing is further clarified in the full text version of the announcement, which can be found at Appendix A.

The lifting of restrictions on the class of licence formerly known as *restricted* has occurred in full. In effect the significant changes that have occurred are that:

- there is no limit on how many domestic rock lobster processing licences can be issued;

- there is no limit on the product type that can be produced by domestic rock lobster processing licences; and

- there is no longer a limit on selling only within Western Australia - domestic rock lobster processing licences can distribute throughout Australia.

The basis of the Government's decision to partially deregulate the rock lobster processing sector as indicated, is that there are as yet unquantified but high consequence risks that product reputation and compliance strategies will be significantly undermined. It is the Government's view that by approaching the deregulation of the processing sector in this phased way it is possible to learn more about the identified risks and therefore better understand the management measures required to ameliorate them. Such an approach can also assist in managing the cost to society of the management program required to ensure quality and compliance are not compromised.

In response, the NCC has indicated that arguments have not adequately addressed the implied relationship between the increased number of processors and the risk of non-compliance.

10.3.2 Considerations Behind the State Government Position

Increased Risk of Non-Compliance

On average the Western Rock Lobster Fishery produces 11,000,000 kg each season, periodically the seasonal production can be as much as 14,500,000 kg.

In this context it is impressive to note that the Department of Fisheries has a high degree of confidence that ostensibly there is not a black market trade in western rock lobster. Furthermore the Department has a high degree of confidence that there is very little catch and trading in totally protected rock lobsters (i.e. lobsters outside permissible size or in breeding condition).

The ability to make such statements is directly attributable to the fact that there is a sound regulatory framework that covers both catching and processing sectors and is supported by a high but appropriate level of enforcement activity. Enforcement activity under the current system is able to be effectively targeted because supply arrangements are well understood and the options for supply are limited.

In a completely unregulated environment supply would be far less predictable and the ability to supply product "under the radar" significantly increased.

By limiting deregulation to the domestic suppliers the Department of Fisheries is able to monitor the influence deregulation is having on the rate of non-compliance. Noting that the quantity of lobster supplied domestically is also comparatively low to that which is exported, deregulation of this sector is low risk.

Should the Government have taken the alternate view, i.e. that deregulation should apply more broadly and include the unrestricted or export focussed operators, then clearly the risk would be far greater because of the quantity of product handled.

It would not be acceptable to Government for such a risk to be unattended to and therefore the required response would have had to be a dramatically increased and more draconian compliance system. Such an approach is less than ideal because compliance would place greater inefficiencies on business while also increasing the cost of management across the board.

The increased direct compliance costs would be associated with the need for additional compliance staff to cover an increased number of processing facilities over a greater distance. It would also be necessary to inspect a greater percentage of the total catch (at least initially) to ensure that compliance rates are in fact acceptable.

The reference to greater inefficiencies on business relates to the cost business would have to wear in order to comply with the increased frequency of fisheries officer checks. Typically inspections would involve checking for totally protected rock lobsters and checking the paper trail that evidences whether or not the source of lobster is legitimate.

To put the scale of increase in compliance spending that would be necessary in context, the Department has already employed an additional fulltime fisheries officer to meet the increased requirement associated with the partial deregulation already implemented.

Given that the current system has allowed the industry to become the world leader and produce considerable economic benefits to Western Australia it is not justifiable to impose the increased cost burden of compliance to pursue the theoretical benefits of competition policy.

Increased Risk of Quality Erosion

Under the existing and longstanding processing sector regulations the western rock lobster industry has developed a reputation as being the provider of the world's premier lobster seafood product.

This enviable reputation has, over an extended period of time, provided western rock lobsters with an edge in international markets and therefore contributed to the overall profitability of the industry.

In recent times other lobster producing nations have closed the gap by investing in better seafood handling technology and techniques. In an environment that has become increasingly competitive on a global scale it is imperative that the industry continue to consistently supply only the best quality lobster. To do otherwise would pose a significant risk of product substitution.

The current group of unrestricted rock lobster processors have largely been responsible for developing the best practise handling systems and are committed to ongoing improvement.

Should the Government have adopted a more radical approach to deregulation there would have been a significant risk that "fly by night" operators could have undercut longstanding lobster exporters for market share but in doing so sacrificed quality and in doing so damaging the reputation of western rock lobster more broadly.

It is tempting to say that this is normal competitive business, but the consequences of such competition are not in the public interest.

Existing Levels of Competition

The numbers of export rock lobster processing licences has been limited since the mid 1960's, primarily as a cost effective point of compliance for biological controls on the rock lobster fishery. The sector is extremely competitive with the major part of product value (ie. in excess of 80%) being returned to fishermen.

Licences has been freely transferable in accordance with market conditions with licence values in recent times not attracting a significant premium. In the last 3 years rock lobster processing licences have been freely traded with the consequence of one company going into receivership, two companies joining together to form a new public listed company, a private company exiting the industry in favour of another existing private company acquiring the licence and, more recently, as a result of the receivership, 2 additional entities entering the sector. A listing of formal licence transfers over the past three years, together with applications pending, is provided at Appendix A.

Profit levels in 2003/04 in the sector were so marginal that only one company was understood to return a positive bottom line result. The sector is acknowledged as fiercely competitive with low profit returns.

Further deregulation of the export processing licence numbers will do little for the sector or for competition other than increasing the risk and therefore actual cost for compliance. As the industry is under cost recovery, these costs will be passed onto industry with little prospect for increased return.

There is no evidence that further deregulation outside the domestic sector will add any benefit. To the contrary, increased cost albeit small will exceed the benefit. The industry is effectively operating with 8 packers with 19 licences in the system. It is argued there is no net public benefit from further licence deregulation.

10.3.3 Summary

The Government's position does not eliminate the prosect of further deregulation - in fact it sets out a timeframe under which it can be considered and has implemented some measures to manage this process (see Appendix B).

The fact of the matter remains that a phased approach is in the public interest because it demonstrably ameliorates the identified risks to an acceptable level and minimises the cost associated with managing risk and implementing change. On current experience, further deregulation will not provide improved competition but rather the likelihood of negative public net benefit and increased compliance costs for the rock lobster fishery.

10.3.4 Appendix A: Rock Lobster Unrestricted Processing Licence Transfers

Licence Number	**Previous Licensee**	**Date of Transfer**	**Current Licensee**
PROL 1103	M.G. Kailis (1962) Pty Ltd	23/03/2001	Bluewave Seafood Ltd
PROL 1051	Fremantle Fishermen's Co-Operative Society Ltd	02/04/2001	M.G. Kailis (1962) Pty Ltd
PROL 1095	Kailis & France Foods Pty Ltd	28/02/2002	Lobster Australia Pty Ltd
PROL 1174	Kailis & France Foods Pty Ltd	28/02/2002	Lobster Australia Pty Ltd
PROL 1066	Batavia Coast Fisheries Pty Ltd	22/01/2004	Lobster Australia Pty Ltd

Pending Transfers

Licence Number	Current Licensee	Proposed Transferee
PROL 1051	M.G. Kailis (1962) Pty Ltd	Bluewave Seafood Ltd - Receiver and Manager
PROL 1103	Bluewave Seafood Ltd	Fieldview Investments Pty Ltd
PROL 1041	Bluewave Seafood Ltd	Fieldview Investments Pty Ltd
PROL 1031	Bluewave Seafood Ltd	Fieldview Investments Pty Ltd
PROL 1042	Bluewave Seafood Ltd	Colosseum Securities Pty Ltd
PROL 1060	INF Limited	Cervantes Seafood Limited

10.3.5 Appendix B: State Government Directions In Response to the National Competition Policy - Rock Lobster Processing Authorisations and Rock Lobster Aquaculture

Summary of Outcomes

- The current regulatory framework pertaining to the granting and control of licences classified as "unrestricted" be retained and reviewed in 2006 once the potential costs and risks of deregulation are better understood by both the Government and the industry itself.

- The regulatory framework pertinent to the current holders of "restricted" licences be amended so as to allow for the issue of a new class of domestic (ie. Australian market) processing licence. The new class of domestic licences to be issued to all applicants deemed to be "fit and proper" with no cap on the number of licences to be issued provided all conditions are met.

- Prior to deregulation of the domestic processing sector (1 July 2003) the Department of Fisheries- call for expressions of interest to gauge the level of interest in the new domestic processing licences. This should enable the Department of Fisheries to better plan the implementation and management process.

- A new cost recovered position is to be created within the Special Operations Unit of the Department of Fisheries to carry out compliance work associated with auditing the flow of lobster through markets.

- That stiffer penalties for processing offences be developed for breaches of the FRMA and these penalties be able to fall on companies and company directors/managers. This will require an amendment to the Act.

- That there be a provision under the FRMA allowing the Executive Director to prohibit persons convicted of fisheries processing offences from being at a fish processing establishment.

- That there be a requirement on all domestic rock lobster fish processing licences to meet the requirements of the ANZFA food safe plus code.

- That the existing export (unrestricted) rock lobster fish processing licences continue to be subject to the more stringent Australian Quarantine Inspection Service requirement only.

- In order to allow unrestricted licence holders the ability to operate multiple receival points unrestricted licence holders can also apply to hold any number of new domestic processing licences. However they can only transfer unprocessed live lobsters to their export establishment in accordance with AQIS requirements. The existing ability to operate one annexe and any number of receival depots will be maintained.

- The process for recovery of additional costs associated with de-regulation of the domestic processing sector be developed in consultation with industry.

- The holding of a "new" domestic processing licence would also entitle the holder to hold and fatten rock lobsters for domestic sale.

- Rock lobster aquaculture licences be granted to any suitable applicant (ie. a "fit and proper person").

- Those holding both the new domestic processing licence and unrestricted rock lobster processing licence (including those also holding aquaculture licences) be required to hold and process wild caught and aquaculture rock lobster separately.

- In order to implement these changes and put in place an effective new compliance regime the new arrangements dealing with the deregulation of both wild caught domestic processing and aquaculture activities be operational from July 1st, 2003.

10.4 AQUATIC TOUR MANAGEMENT ARRANGEMENTS

10.4.1 Background

In June 2001,the aquatic tour regulations came into operation, which for the first time created a management and licensing framework for the aquatic tour industry.

Prior to June 2001 there had been unprecedented growth in the aquatic tour industry, which had the potential to threaten the sustainability of fish stocks and the economic viability of the industry.

Prior to the implementation of the licensing and management arrangements, the Department of Fisheries (Department) received approximately 500 expressions of interest for fishing tour licences. Three hundred formal applications were subsequently received and at present 292 fishing tour licences have been issued.

To be licensed as a fishing tour operator, applicants were required to address a number of criteria set out in Ministerial Policy Guideline No.12 (MPG).

In June 2003 the aquatic tour arrangements were reviewed in accordance with NCP principles. The review recommended that restrictions on access to the fishing tour industry be retained and reviewed in 2005 - 2006, in the light of collected catch and effort data.

In August 2003 the WA State government adopted the review recommendation.

The NCC has subsequently assessed that WA has not adequately fulfilled its obligation under the Competition Policy Agreement (CPA) in relation to the aquatic tour licensing arrangements.

10.4.2 Issues Raised by the NCC

The NCC raised the following issues as part of its 2003 assessment:

- The review of the aquatic tour regulations did not adequately evaluate less restrictive alternatives to limiting operator numbers;
- Unlimited entry is unlikely to threaten the viability of most operators;
- If there was no restriction on entry, catch effort could be controlled by adjusting bag and size limits, including setting specific limits for aquatic tours; and
- Imposing a levy on aquatic tour customers.

10.4.3 Benefits of the Restriction

The principal benefit delivered in the public interest by the use of the fishing tour entry restriction is the cautious and responsible management of WA's finfish stocks with regard this sector, which is only one component of the total exploitation of fish, the others being commercial and general recreational fishing.

Over 100 species of finfish are exploited in WA by these sectors and there remains considerable uncertainty around the exploitation status of most of them - which warrants a high degree of precautionary management.

Where there is insufficient time series catch and effort data, as is the case for the aquatic tour industry the use of a fundamental input control of limiting the number of operator licences is justified for the following reasons:

- it is necessary to manage the fishing tour sector as part of a holistic approach to fish resources management;
- without the ability to constrain the impact of the fishing tour sector on WA's fish stocks, the industry's operations may be unsustainable;
- it is not equitable to allow the fishing tour sector to continue to expand to unsustainable levels while the commercial fishing sector has been capped for many years and in some cases has undergone significant effort reductions; and
- there are benefits to the general community in having a managed fishing tour industry, including:
  - industry can be part of a living aquatic resource management framework that ensures biological sustainability and provides opportunity for economic viability;
  - provides access to leisure activities by a quality-based industry; and
  - economic benefit to the community from tourism through marketing of the fishing tour industry.

There are sufficient global and Australian examples of management failure, stock collapse and consequent economic and social repercussions in these circumstances to warrant a high degree of precaution until there is greater certainty around yield and exploitation parameters.

Failure to sustainably manage the finfish component of WA's aquatic resources would lead to stock collapse and would be an unacceptable loss for the State's community in general.

10.4.4 Costs of the Restriction

The assumption may be that if there is no entry access restriction to the fishing tour sector, there would be more fishing tour operations in WA than there presently are and this could be seen as a benefit to the WA economy in general and regional centres in particular. However offsetting this proposition is a strong likelihood that an increase in the numbers of operators would occur if the restriction was lifted, and this may well have the effect of making those existing businesses economically unviable.

The Department is committed to the principles of Ecologically Sustainable Development (ESD) which carries with it a responsibility to address, not only natural resource management but issues of economic and social wellbeing.

By restricting entry and having regulated the number of fishing tour licences the following things are achieved. Business viability is increased and improved service provision is more likely, overcapitalisation is less likely to affect business health and the aquatic environment and industry will be more amenable to play a resource stewardship role.

10.4.5 Why Alternative Methods Are Not Used

Australia is signatory to the Rio Convention and has adopted as matter of policy the application of the "precautionary principle" in natural resource management and encapsulated this in ESD principles.

The key underpinning principles of natural resource management are predicated on a significant body of scientific and theoretical thought, as well as over 40 years experience in the Australian context.

Fishery management models tend to use either explicit output controls, in the form of a total allowable catch where there is sufficient time series data, or a more precautionary approach using input controls where there is a high level of uncertainty and therefore ecological risk.

The Tour Operators Fishing Working Group (TOFWG) implicitly and explicitly articulated and considered these issues (Fisheries Management Paper No. 103) and made the recommendation that given the lack of scientific information at the time a limit on the number of licences was required.

The Departmental NCP review of the tour arrangements did consider the alternative entry access methods of "auction, tender or ballot" and quota setting, as per below-

Permanent Access Through Auction, Tender or Ballot

The majority of fishing tour operations in WA are what could be termed, lifestyle businesses that are subject to the buoyancy, or otherwise, of the Australian and overseas economies and the vicissitudes of the of the tourism market generally.

Given this background, to introduce auctions or tenders as the entry mechanism to an already existing, although unregulated, industry would be inequitable as it would be unlikely that a large proportion of the existing tour operators would be able to afford to tender or pay at auction sufficient money to win access. This approach has not been used in the granting of access to fisheries right around Australia.

The majority of the existing tour operators had invested substantial time, effort and money building business infrastructure, reputation and knowledge in order to reach the point where the business is independently viable.

To be unable to gain a licence either because they could not raise enough capital to tender or because a ballot(luck) system of entry access was introduced, would mean years of work, investment and future planning would be wasted.

A likely outcome from this displacement is the conversion of local fishing knowledge, equipment and infrastructure, to commercial fishing operations with the potential to activate latent effort in the wetline sector.

Temporary Access Through Auction, Tender or Ballot

In the absence of any sort of enduring access, not only would there not be an incentive to care for the resource but there would be a predictable compulsion to discard the stewardship role and endeavour to raise the emphasis on quantity of fish to be caught per trip in an effort to lift short term profitability, seize market share and generally lift business profile in the belief that it may help ensure a further permit or licence.

If longevity in the sector is not likely, short-term damage to fish stocks will have no personal repercussions on that operator. Long-term access to the fishing tour industry provides a compelling reason to nurture the resource that underpins it.

Quota Setting

The problem with introducing this management mechanism, whether it be, Total Allowable Catch or Individual Transferable Quota's, is that the size of the total catch for the sector is not known. Quota management can only work if research data can give meaningful parameters to the size of the fish take. The logbook data review will be an important first step in this direction.

As has been mentioned, the fishing tour industry is only one sector to be considered in the management of WA's finfish, the others being commercial, aboriginal and general recreational fishing.

To introduce quota for one sector before each sector is poised for integration would run the risk of falsely forecasting a sector share prematurely. Finfish resource allocation is one of the targets of integrated fisheries management and can only be successful if all sectors are considered in conjunction with each other.

With regard to the suggestion that daily bag and size limits, including setting specific limits for aquatic tour operators would deal with catch effort, it is widely acknowledged that bag limits do not control total or even total sectoral catch in any significant way once fishing effort exceeds a certain level.

In the case of small stock fisheries, typical of WA's continental shelf, the sustainable yield is likely to be no more than 500 tonnes per year for any given species. The fishing tour sector alone, at current effort levels, is capable of fully exploiting these stocks given adequate fishing efficiency with even very low bag limits of one.

Imposing a levy on aquatic tour customers to reduce effort raises issues of gross social inequity, and is likely to reduce individual operator viability due to price sensitivity.

10.4.6 Steps Taken Toward De-regulation

Fishing tour licences are wholly transferable and 44 have changed hands since licensing implementation in 2001. The transfer of licences will continue to be a pathway into the industry.

Thirteen fishing tour applicants who were not successful have exercised their right to appeal the decision in the Fisheries Objections Tribunal. All matters have now been heard and of the 13 objections 2 appeals have been dismissed and 8 have been granted licences by the Tribunal, with the final 3 findings yet to be made.

Although the aquatic tour arrangements in WA did restrict entry, the process not only licensed those operators already committed to the industry and who were working, but criterion 3.9(b) of the MPG allowed access to new entrants who were proposing either an operation in an area where there is no other service provided or the operation would not be a threat to fish stocks. At the time the Departmental NCP review was carried out 47 licences had been granted by this mechanism. This number has now risen to 56.

Presently, Ministerial Policy Guideline No.12 is being amended in order to address future licensing and management issues. The criteria that required applicants to have prior history and commitment to the fishing tour industry, is being removed. Applicants will need to demonstrate that their proposed activities will be carried out in an area that is not currently serviced by an existing operator or for a stock or species which is not currently fully exploited.

10.4.7 Summary

The TOFWG stated in its final report to Government in 1998, that over the seven year period between 1990-1997, there had been a 337% increase in the number of charter (fishing tour) operations. If this rate of expansion had been allowed to continue the year 2010 could have seen 1500 tour operations in Western Australia.

The NCC made comment that, "the analysis of operator numbers was inadequate, based merely on expressions of interest received, which is likely to overstate actual entry."

It may be true that not all expressions of interest received would have translated into actual operations, however this indicated the level of interest in 1999-2000. If there had been no mechanism to limit initial and ongoing entry by the time the data review was carried out in 2005-06, the number of licensed operations in this sector may well have been unsustainable in ecological, economic and social terms.

The reason the data review will not be carried out until 2005-06 is that approximately 5 years of logbook data is necessary to smooth out fluctuations and distortions due to environmental and other variables, in order that the distilled information is accurate enough to base further management decisions on.

Until the examination of catch and effort data is complete, at which point management options can be reviewed, entry into the fishing tour sector will continue to be via the pathways of licence transfer and by applicants demonstrating that their proposed activities will be carried out in an area which is not serviced by an existing operator or for a stock or species which is not currently fully exploited.

Long-term sustainability will continue to be the overriding consideration.

A limit on operator numbers is the only known regulating mechanism to manage the take of finfish by the fishing tour sector. Such an approach is entirely consistent with well established fisheries management practices.

The principle reason for the constraint on tour based operators is linked to the issue of market failure should access not be controlled. Within Western Australia, the issues of market failure and reasons for Government intervention in wildstock fisheries management are well understood for commercial fisheries management. The same principles should apply to the recreational sector and more specifically the aquatic tour sector. WA Government direction in this matter is clear and unequivocal.

10.5 STATE SUPERANNUATION ACT 2000

10.5.1 Compliance with CPA Clause 5 Obligations

Western Australia has fully completed its review and reform activity in this area. In this regard, the legislation review of the *State Superannuation Act 2000* was conducted by an independent, reputable and suitably qualified expert (namely Environmental Resources Management Australia (ERM)). The review examined all potential restrictions on competition in strict accordance with clause 5 of the CPA, as per Western Australia's commitment under the NCP and involved extensive public consultation.

The NCC has assessed that *"Western Australia did not demonstrate a public interest case for not having a choice of superannuation provider"* and, as a result, has not completed its review and reform activity in this area. This assessment ignores the fact that Western Australia's review and reform activity in this area has been completed in full.

The attached Appendix contains an outline of the process and a summary of conclusions of the independent legislation review of the *State Superannuation Act 2000*.

Two potential restrictions on competition were identified in the independent legislation review:

- the extent to which GES Fund members will be able to select alternative superannuation funds for the investment of their employer contributions is dependent on the Minister for Government Enterprises and the Treasurer approving proposals for other schemes or funds. This potential restriction stems from the 'head of power' provision in the *State Superannuation Act 2000* relating to superannuation funds and schemes other than the GES Fund; and

- the extent to which GES Fund members will be able to select alternative investment strategies for their employer contributions is dependent on the Treasurer approving changes to existing schemes that provide greater investment choice. This restriction was removed following the introduction of member investment choice for West State Super members on 1 July 2001.

The independent report demonstrated that the retention of the "head of power" restriction in relation to choice of fund provider was supported by an independent review and a robust public interest test. As a result, the outcome of the legislation review was consistent with the CPA clause 5(1) guiding principle. In particular, the independent expert found that there was a net public benefit associated with the retention of the "head of power", under which the establishment of alternative superannuation funds and schemes and the payment of employer contributions into them are subject to the written approval of the Treasurer and the Minister for Government Enterprises.

Accordingly, the review report concluded that the "head of power" in relation to choice of superannuation provider gives rise to a net public benefit and, as a result, recommended that it should be retained on public interest grounds. In February 2003, the Western Australian Government endorsed the recommendations of the review of the *State Superannuation Act 2000*.

The process followed by Western Australia in the legislation review of the *State Superannuation Act 2000* complied fully with Clause 5 of the CPA. The outcome of the review (namely, that the "head of power" should be retained) is therefore valid. The Appendix contains excerpts from the legislation review report that demonstrate the public interest case. Completion of the review and its acceptance by the Western Australian Government marks the end of the State's review and reform obligations in the area of public section superannuation as a consequence.

As a consequence, Western Australia rejects the NCC's view that it has not completed its review and reform activity in this area. There are no public sector superannuation-related grounds for the suspension of NCP payments to Western Australia as a result.

It should be noted that Western Australia takes its NCP obligations seriously and reviews its existing public sector superannuation legislation and any new proposals for new legislation on an ongoing basis in accordance with its requirements under the NCP.

10.5.2 Public Benefit Consideration of the "Head of Power"

The Ability of the State to Manage its Financial Risks Optimally

In Western Australia's case, the "head of power" for the Government to restrict choice of fund is of potentially substantial benefit to the State and the general community while the existing public sector superannuation schemes are not fully funded because it enables the State Government to minimise risks related to superannuation that could affect the financial rights or obligations of the Crown adversely.

In particular, it enables the State Government to better manage risks associated with the funding of its superannuation schemes (Gold State Super (GSS), the Pension Scheme (PS) and West State Super (WSS)[1] are currently unfunded schemes). The absence of the "head of power" to manage the application of choice of fund for State public sector employees could give rise to undesirable issues in relation to the State's finances, the financial impact of which would have to be borne by the State (and, by implication, the State's taxpayers).

[1] West State Super is fully funded for investment purposes only. The funding arrangement pertaining to WSS was achieved through GESB borrowing money to fund the unfunded portion of WSS prior to the inception of member investment choice. The unfunded liability pertaining to WSS is being extinguished progressively by the State over the next 20 years through an amortisation arrangement between the GESB and the Treasurer.

For example, if unrestricted choice of fund and portability[2] were introduced for members of the schemes constituting the GES Fund, it could force the State to fund in the order of $4.9 billion for the accelerated emergence of superannuation liabilities and make additional concurrent employer contributions of up to $100 million per annum if all members were to exercise choice.

Significantly, the Commonwealth's Bill on choice of fund and its regulations on portability appear to deliberately exclude the application of choice of fund and portability provisions to unfunded public sector superannuation schemes. This would seem to recognise that each State's public sector superannuation arrangements are unique and that mandatory application of the provisions of the Bill to their unfunded or partially funded schemes could have potentially major adverse fiscal consequences.

Market Insignificance of Consequences from Use of the "Head of Power"

The GESB accounts for approximately 0.6 percent of the national market for the provision of superannuation services (based on its share of superannuation funds under management). This is insignificant in terms of the total superannuation market in which the Western Australian public sector superannuation schemes operate. For example, the GESB's market share within its relevant markets is significantly less than the threshold which the Australian Competition and Consumer Commission considers gives rise to a lessening of competition in its economic analysis. If the market for financial services more generally is considered then the GESB's share of this market is even more inconsequential.

Accordingly, any competitive restrictions that could potentially flow from use of the "Head of Power" would have an immaterial adverse impact on the efficiency of the overall market for the provision of superannuation services. In any event, the GESB already internalises competitive pressure within its operations to a significant extent as the markets for many of the services utilised by the GESB are highly contestable. For example, whilst the GESB maintains overall responsibility for investment of assets within the GES Fund, private sector service providers are largely responsible for managing the assets of the GES Fund. Specialist fund managers are selected by the GES Board in a competitive process and are subject to regular reviews of their performance. Similarly, other services utilised by the GESB such as information technology are also outsourced. The GESB's administration services also have the capacity to be outsourced by the GES Board if it considered that this would be in the best interest of members. This has already been assessed previously and is the subject of ongoing review.

[2] The Commonwealth Government's proposed choice of fund and portability policies are complementary and, because of this, it is considered likely that portability would commence concurrently with choice of fund. For this reason, the use of 'choice of fund' in this document refers to the issues of both choice of fund and portability.

Members' Exposure to Risks Associated with the Regulation, Governance and Maturity of the Superannuation Industry

The superannuation industry as it currently stands has a number of key features:

- most customers have an under developed understanding of the industry, investment fundamentals and the retirement income system generally. Information asymmetry between service/product providers and consumers leaves the latter group's decision-making ability vulnerable to exploitation by the former group; and

  - while the prudential aspects of the superannuation industry have been regulated heavily for over a decade, regulation of the industry's retail aspects from a licensing perspective has only just been addressed in a comprehensive sense through the Commonwealth *Financial Services Reform Act 2001*, which took effect from 11 March 2002 (with a two-year transitional period for entities to obtain the necessary licences). This means full licensing of the financial services industry has only just been achieved. It will take some time to gauge the efficacy of this legislation in terms of its impact on the efficiency of the superannuation industry. In particular, there remains scepticism within the superannuation industry on the efficacy of the disclosure regime as set down within the FSR and, particularly, as it relates to ongoing administration charges and the impact of commissions paid to financial advisers. For example, if financial advisers receive commissions from superannuation providers (as many do) then they may have conflicts of interests between their duty to provide unbiased advice to their clients and their incentive to maximise their remuneration. The advice clients receive may be compromised as a result.

The foregoing points indicate that the superannuation industry is unlikely to be functioning as efficiently as it could at present. Market distortions or imperfections in the industry include high entry/exit fees charged by certain classes of superannuation funds, lack of complete disclosure to consumers (leading to information asymmetry between consumers and product/service providers) and the potential for consumers to receive biased advice.

Western Australia is concerned that any relaxation of the current restrictions on choice under the "head of power" in the absence of structural reforms to remove the market imperfections identified above is likely to lead to a second best outcome. Under such an outcome members of the State's public sector superannuation schemes would be disadvantaged through lower retirement benefits, with a consequent reduction in economic efficiency.

In this regard it is pertinent to note that there is disagreement in the Federal Parliament about the public benefits of the Commonwealth Government's policy on choice of fund and portability, with the Australian Labor Party expressing similar concerns to those above about the desirability of introducing choice in the absence of structural reforms in superannuation and subsidiary markets such as the financial advice and planning industry.

10.5.3 Appendix: Outline of Legislation Review of the State Superannuation Act 2000.

Independent Expert

The legislation review of the *State Superannuation Act 2000* was undertaken by Environmental Resources Management Australia (ERM) in December 2001. Relevant excerpts from the legislation review report are set out below.

Terms of Reference for the Review

The terms of reference for the legislation review of the *State Superannuation Act 2000* stated that without limiting the scope of the review of the Act and associated provisions, the review is required to:

- clarify the government's objectives with the *State Superannuation Act*;
- identify the nature of the restrictions on competition contained within the *State Superannuation Act*;
- analyse the likely effect of any identified restrictions on competition and on the economy generally;
- assess and balance the costs and benefits of the restrictions identified;
- consider alternative means for achieving the same result including non-legislative approaches; and
- conduct the review in accordance with the guidelines issued by the Competition Policy Unit of Treasury.[3]

Description of the Potential Restriction on Choice of Fund

[3] National Competition Policy Review of the State Superannuation Act 2000 and State Superannuation (Transitional and Consequential) Act 2000, Environmental Resources Management, December 2001, Appendix B p2.

"Section 30 of the *State Superannuation Act* makes provision for an employer to establish an alternative superannuation scheme or fund for employees other than the GES Fund. It also makes provision for superannuation contributions to be made into a fund or scheme other than the GES Fund or other scheme or fund established by an employer under section 30. However, both the establishment of alternative funds and schemes and the payment of employer contributions into them are subject to written approval from the Minister and the Treasurer. Thus, employees would not have an unrestricted choice of superannuation funds under the Act, since the extent of that choice is subject to the approval of the Minister and the Treasurer."[4]

Objective of the Potential Restriction on Choice of Fund

"The objective of the restriction is to enable the Government to manage risks that will or may affect the financial rights or obligations of the Crown."[5]

Potential Disadvantages of the Potential Restriction on Choice of Fund

- "Lower level of retirement benefits for existing members.
- Higher administration costs."[6]

Potential Advantages of the Potential Restriction on Choice of Fund

- "Provision for the State Government to manage financial obligations.
- Maintains higher investment returns for members."[7]

Assessment of Public Benefit of Potential Restriction on Choice of Fund

"The following findings were made in respect of impacts of the "heads of power" restriction relating to choice of fund:

- There is no prima facie evidence that members of the GES Fund experience lower earnings on superannuation investments by virtue of not being permitted to transfer to another superannuation fund.
- There is no prima facie evidence that members of the GES Fund pay higher administration costs than they might if not restricted in choice of fund.
- The State Government may be safeguarded against not being able to meet its financial obligations without substantial budgetary impact if the Treasurer and Minister maintain a veto over the introduction of choice of fund. The financial consequences associated with choice of fund to the State Government may cause additional expenditure.

[4] Ibid, p6.2.
[5] Ibid, p5.1.
[6] Ibid, p5.1.
[7] Ibid, p5.2.

- The existence of the "head of power" restriction may reduce the need for the Board to change the mix of its investments to maintain liquidity, although it is unlikely that the Board will need to reduce its investments in non-liquid assets in any case."[8]

Alternative Means of Achieving the Legislative Objectives

Two alternative mechanisms for achieving the legislative objective were considered.

"There are no non-legislative alternatives to the "heads of power" restriction. One legislative alternative would be for the GES Board to have the discretion on when choice of fund should be offered to members. However, such an arrangement would not remove any of the financial risks to State Government that flow from a choice of fund. Indeed, since the GES Board is accountable only to its members, such an arrangement may actually enhance the financial risk faced by the State Government since the GES Board will invariably be driven by market pressures to maintain membership in a competitive environment. Another arrangement would be to move the GES Board out of the statutory framework and into a regulatory framework. However, this would be unable to work in practice as it would require a once-off payment by the State Government to enable the GES Board to offer choice of fund whenever it wanted to."[9]

"The retention of the "heads of power" restriction was considered to provide the best means of achieving the legislative objective."[10]

Conclusion

"The head of power for the Government to restrict choices of fund in superannuation schemes is considered to be of potential benefit to the State and public through enabling the State Government to better manage financial risks associated with the funding of the superannuation schemes, and through enabling the State Government Superannuation Board to better manage liquidity of fund investments. There is no prima facie evidence of members of the schemes incurring costs as a result of restricted choice of funds. As such, it is concluded that the head of power for the choice of funds to be subject to the approval of the Minister and the Treasurer gives rise to a net public benefit."[11]

Recommendation

[8] Ibid, p6.2.
[9] Ibid, p5.12.
[10] Ibid, p6.2.
[11] Ibid, p6.3.

"It is recommended that the "head of power" created under section 30 of the Act, whereby the Minister and the Treasurer must approve the establishment of any alternative superannuation funds and the payment of employer contributions into those funds, be retained."[12]

[12]Ibid, p7.1.

10.6 LOTTERIES

The NCP Review and the Competitive Neutrality Review of the Lottery Commission Act and the associated Regulations and Game Rules were completed within the time lines stipulated by the DTF.

The reviews were completed in August 1997 and May 1999 respectively.

The executive summaries provided with each review were as follows.

10.6.1 Executive Summary: Competition Policy Review

Background

The requirement for the Lotteries Commission to undertake a Competition Policy Review of the Lotteries Commission Act 1990 and the associated delegated legislation of the Game Rules and the Lotteries Regulations is as a consequence of the NCP Agreement between the Federal Government and all State Governments.

Essentially the Agreement provides that the Federal Government will make payments to those States and Territories carrying out the NCP Reforms. States and Territories which comply with the reforms will receive "competition payments" and guaranteed increases in financial assistance grants. These payments will commence in 1997/98 and in line with its share of population, Western Australia will receive around $1.6 billion between 1997/98 and 2005/06.

The first component of the reform is to review all legislation which potentially restricts competition by the year 2000. The Lotteries Commission Act was identified as being potentially restrictive and as a consequence of the timing of the Commission's own Legislative Review, it was decided that the NCP Review should be done concurrently with the Legislative Review. As a result the review was nominated for completion in the 1996/97 financial year. However, delays with the Legislative Review, for a variety of reasons, and the requirement to comply with the NCP Agreement timetable has resulted in the NCP Review being undertaken on the existing legislation. The information gained in this review is proving to be very useful in framing the terms of reference for the Legislative Review.

Basis of the Review

Essentially a NCP Review is to examine the legislation and to:

- clarify the objectives of the legislation;
- identify the nature of any restrictions on competition;

- analyse the effect of the restriction on competition and the public;
- determine if there is a net benefit to the public in continuing with the restriction;
- consider alternative means of achieving the same result.

The underlying principle in undertaking the review is the assessment of "public benefit". That is, if the restriction on competition resulting from the legislation can be shown to be in the public interest, then there is a reasonable argument for the restriction to remain.

In the case of the Lotteries Commission Act, the public interest objectives assessed included:

- economical and financial considerations;
- distributional considerations;
- uncertainty and risk; and
- the avoidance of public bads.

Outcomes

The outcomes of the NCP Review are:

- the objectives of the Lotteries Commission Act were identified as (page 4 of Report):
  - to provide for the operation of reliable and credible state lotteries in WA;
  - to raise funds for specific government agencies and for specific other causes such as the Festival of Perth and the Commercial Film Industry;
  - to distribute specific amounts and surplus directly to eligible organisations for benevolent and charitable purposes; and
  - to provide accountability to the Parliament, the public and other organisations with which it deals.
- the objectives of the Government's gaming policy framework which includes the lotteries sub-market were identified as (page 5 of Report):
  - to control gaming to protect the rights of consumers, to keep out criminal elements and to maintain the integrity of operators;
  - to limit competition in each sub-market of the gaming market;

- to allow each sub-market of the gaming market to met specific objectives;
- to supplement other forms of government revenue; and
- to ensure a substantial amount of the revenues of gaming are returned to WA.

- the Lotteries Commission Act 1990 on its own does not restrict competition (Page 7, Nature of the Restriction);
- the Government's gaming policy framework and the operation of the Gaming Commission Act and other Gaming legislation gives the Lotteries Commission its sole supplier status in the lotteries sub-market (Page 10, Market Power);
- the market in which the Lotteries Commission operates has never been determined by the NCC or the Federal Courts, therefore the market power of the Lotteries Commission is open to interpretation (Page 7, Identification of Market);
- if the Lotteries Commission's market is assumed to be the gaming market or the entertainment market, the market power of the Lotteries Commission is minimal (Page 8, Gaming Market; Page 8, Entertainment Market);
- an analysis of the financial impact of the Lotteries Commission's market power in the lotteries sub-market (the narrowest market definition) resulted in a net benefit to the public (Page 16, Costs & Benefits of the Restrictions);
- an analysis of the non financial impacts of the Government's gaming policy framework in the lotteries sub-market resulted in substantial public benefits in the areas of product knowledge, the control of fraud and criminal activities and avoidance of public "bads" (Page 16, Costs & Benefits of the Restrictions); and
- an analysis of alternatives to the existing legislation including deregulation, open competition and the replacement of the Lotteries Commission by a private operator, concluded that there were no compelling arguments to support the adoption of any of the alternatives ahead the existing regime (Page 18-25, Alternative Means of Achieving the Same Result).

Conclusion

As a consequence of the analysis undertaken in the review, it was recommended that:

> *The current regulatory regime is clearly operating in the public interest and should continue in its existing form* (Page 26-28, Overall Conclusion).

10.6.2 Executive Summary: Competitive Neutrality Review

Background

In April 1995 the CoAG, as part of a uniform approach to implementing NCP, agreed on a competition framework in the form of the Competitive Principles Agreement (CPA). The principle of competitive neutrality is an integral component of the CPA.

The objective of competitive neutrality is to eliminate distortions in the decisions of economic agents which may arise from the public ownership of agencies, or business units, engaged in significant business activities. The underlying principle is that government businesses should not enjoy a competitive advantage, or disadvantage, simply as a result of their public sector ownership.

As part of the Western Australian Government's commitment to the CPA the Lotteries Commission of Western Australia (LCWA) was required to undertake an assessment of the costs and benefits of implementing competitive neutrality.

To this avail the LCWA has assessed the benefits and costs of implementing competitive neutrality through an examination of:

- the individual competitive advantages and disadvantages that affect the Commission,
- commercialisation of the Commission: and
- corporatisation of the Commission.

Summary & Recommendations

The majority of competitive neutrality reforms involve removing competitive advantages by imposing notional transfer payments such as taxes and other Federal and State fees on agencies. In the case of the LCWA the imposition of these transfer payments have been assessed as having no impact on the efficient allocation of resources in the economy. In addition the introduction of transfer payments directly to the CRF is likely to result in a shift in player sentiment away from lotteries products due to the weakening of the direct link between lottery purchases and funding worthy causes. Any reduction in sales will result in a corresponding reduction in public benefits due to reduced funds to the community.

The majority of competitive neutrality disadvantages imposed on the LCWA are the result of the requirement to comply with the general rules and regulations of the Public Sector. Although these increase the administration costs of the LCWA to the detriment of funding the community, it is argued that the higher accountability and disclosure levels improve the credibility of the Commission and enhance its public image.

In particular the higher disclosure requirements of the FAAA, the use of Public Sector salary scales, the purchasing requirements of the State Supply Commission all add to the Commission's credibility and integrity which have an indirect benefit of increasing sales.

One competitive reform, suggested by the Office of Racing Gaming and Liquor, that may improve the public's perception of the State's gaming controls in Western Australia is to formalise the existing regulation of the LCWA games by the Gaming Commission. This reform was also identified in the recent Legislative Review of the Lotteries Commission Act. The reform has been addresses directly with the Office of Racing and Gaming who now provide supervisory and audit functions on all computer controlled games (ie Lotto and Cash 3).

Conclusion

As a consequence of the analysis undertaken in the review, it was recommended that:

> *The current competitive advantages and disadvantages conferred on the LCWA as a consequence of its government ownership should remain and that no increase in public benefits would result by commercialising or corporatising the Lotteries Commission.*

10.6.3 Actions Resulting From The Review of the Lotteries Commission 1990

There were no actions necessary as a result of the NCP Review and Competitive Neutrality Review of the Lotteries Commission Act 1990.

10.6.4 Actions As A Result Of The Review of The Gaming Commission Act

The NCP Review of the Gaming Commission Act recommended that:

> *An alternative to the existing regime is the introduction of "Agreement Licensing" whereby the Government could license either the Lotteries Commission or another organisation to carry out the state lottery supplier role. A regulatory regime of this nature would provide:*
>
> - *improved flexibility for the Government in determining the most efficient supplier mechanism; and*
> - *depending on how onerous the licensing conditions and the compliance costs need to be to ensure public confidence in the supplier, the same level of public benefits as the existing, low transfer cost, regime.*
>
> *This alternative could also allow for increased competition if the Government deemed that competition in the provision of state lotteries products provided a net public benefit.*

As a result of the recommendations of the Gaming Commission Act the Office of racing and Gaming was required to establish whether it was in the public interest to relax the current restrictions with respect to lotteries and to licence operators other than the Lotteries Commission.

10.6.5 The Western Australian State Lottery

The literal meaning of Lottery is a *"system of raising money by selling numbered tickets and giving prizes to holders of numbers drawn at random"* (The Australian Oxford Dictionary). To this avail, State lotteries exist throughout the world to raise money to support government and community services and while "lottery play" lacks the coercion associated with taxation, state lotteries provide an identical financial role for governments.

The fundamental point of difference between state lotteries and other forms of gambling, such as casinos and betting, is that casino games and betting are largely seen by players to be activities undertaken for entertainment and recreational purposes. Profit taking by the operators of casino games is both accepted and expected by the players.

In comparison most of the participants in the "state lottery" do not see their participation as a gambling or a recreational pursuit. This is especially the case in Western Australia where the products are limited to traditional lottery style games.

Additionally, in Western Australia, market research shows that lotteries participants are cognisant that a significant part of their subscription will flow through to the Western Australian community without profit taking by the operator. That is the players of the state lottery are both the participants and the beneficiaries of the games.

Changes to the regulatory regime that allows for the introduction of competition and the possibility of profit taking by operators has the potential to have a significant negative impact on game participation and the resultant public benefits.

Throughout the world the revenue raising role of state lotteries is clearly recognised and also throughout the world the majority of "state Lotteries" are operated by sole providers. A fundamental principal in these jurisdictions is that the introduction of competition has the potential to diminish the "public benefit message" essential for participation in this form of revenue raising.

10.6.6 The Uniqueness of the Western Australian State Lottery

While the Lotteries Commission Act 1990 empowers the LCWA to run the "State Lottery" and imposes conditions on how it shall carry out its functions, it is the restrictions in the Gaming Commission Act (Section 102) give effect to Government policy that allows the Lotteries Commission to be the dominant supplier and to operate the Western Australian "State Lottery".

Part 3 (Conduct of Lotteries) and Part 4 (Financial Provisions) of the Lotteries Commission Act gives legislative force to how the LCWA conducts its games and distributes the proceeds from its games. These provisions are unique to the Western Australian Lotteries Commission, and assists it to function in an economic efficient and effective manner that maximises public benefits through both participation in the games and the allocation of funds.

In 1996 the Federal Government's, National Board of Employment Education and Training, in its Commissioned Report No 52 (titled, "The employment Potential of New and Emerging Industries"), wrote (at page 108) the following about the legislative regime associated with the Lotteries Commission:

> *"…the WA Lotteries Commission is a striking model of assisting the community through grants for worthy causes and promoting community economic development …… the WA Lotteries Commission is an effective model for the use of gambling derived state revenues to promote economic development and employment and to return these revenues back to local communities in a socially beneficial way."*

Given this uniqueness, recognised by the Federal Government, it is not clear how the introduction of a revised regulatory regime that allows competition between lottery providers, could encourage the same level public participation or deliver the same level of public benefits and the efficiency and effectiveness as the existing regime.

10.6.7 Public Costs and Benefits for the Existing Regime

The State Government's reasons for establishing the Lotteries Commission was not only to raise funds for the state but also to eliminate criminal activities in lotteries through having a single credible supplier. This approach to gaming control has also been utilised by State and National Governments throughout the world.

In addition to the control of criminal elements, the restriction to competition as a result of the state lottery provider being a government monopoly, provides the following public benefits:

- ease and economy of regulation, resulting in higher returns to the public;
- ease and economy of subscription collection;

- high levels of credibility and integrity; and
- maximised subscriptions through the provision of significant prize pools.
- reduced incidence of criminal behaviour in the lotteries sub-market;
- controls the extent of gaming activity, and assists in mitigating the social costs of gaming;
- legislated game rules provide consumers with full information and knowledge about the games being run and ensures fairness;
- government ownership provides assurance of integrity, credibility and accountability in the running of lotteries;
- a level of regulation that is expected by the public;
- lotteries operation in the public interest, eliminating the conversion of public benefits into private benefits (profit taking);
- all surpluses from operations retained as public funds;
- proceeds from lotteries are distributed for community purposes in an appropriate and equitable manner.

The public costs/disadvantages of the restriction are:

- a possibility that the game entry costs will exceed those offered in a more competitive environment (however this is not evident in the few regimes where competition is allowed);
- the potential for new products not to be developed as fast as in a competitive environment (this must be considered in conjunction with the Government policy on the containment of gaming and harm minimisation);
- the potential that the sole operator is not producing the optimal public benefit (this is not evident from ratio analysis of lottery operators where competition has been allowed); and
- the potential for the public to be inconvenienced as result of lower numbers of retail outlets than may possibly be available in a competitive environment (no evidence can be found to support this).

From the available evidence it is clear that the "costs" of the restriction are minor and are outweighed, by a significant margin, by the "benefits" arising from the restriction. This outcome once again is supported by the "single provider" model being used in nearly every state and national jurisdiction throughout the world as providing the most economic, efficient and effective control of lotteries and maximising fund transfers for public benefit.

It is also evident that on balance the existing regulation and restrictions in the lotteries sub-market deliver a net economic public benefit. Additional benefits such as avoidance of public bads (the control of the number of and access to gambling products), the reduction of uncertainty and risk, together with the general neutrality of the financial public benefits, sustains the proposition that the current restrictions and regulatory regime are in the public interest.

10.6.8 Public Costs and Benefits of Increased Competition

Analysis undertaken during the NCP review of the Lotteries Commission Act clearly indicated that there is no compelling argument that suggests treating state lotteries as businesses and changing the regulatory regime or allowing competition in the lotteries sub-market would result in an increase in public benefits.

In fact the evidence suggests that the public could be disadvantaged in a competitive regime. Available evidence indicated that:

- lotteries are not normal businesses, their sole purpose is to raise funds for worthy causes, not to produce profits for shareholders;
- lotteries growth should be managed in a socially responsible manner not driven by profit maximisation;
- treating lotteries as normal businesses requiring ROIs, dividends and profit maximisation, requires increased regulation and increased regulatory expenditure to protect both the public interest and community returns; and
- modelling of competitive scenarios in New Zealand revealed that returns to the government and the community are likely to reduce in a competitive regime.

In the absence of an alternative model, supported by data (not ideology), that clearly delivers quantifiable public benefits, it is clear that the current Lotteries Commission Act and the Government's broad policy framework with regards to restrictions in the lotteries product sub-market be maintained.

Private Operators

There is no compelling evidence to suggest that a private lottery operator would provide additional public benefits over the existing regime. Available evidence suggests:

- privately operated State Lotteries do not offer price advantages over the existing regime (the privately operated State Lottery in Australia has higher prices for entry into the identical prize pools);

- private operators generally require a higher level of regulation, resulting in higher public costs;
- while it is widely argued that private operators operate more efficiently, these savings do not appear to be passed on to the public or the Government (the Victorian model is a case in point with the excessive payments made to the operator's trustees and the beneficiaries); and
- a private operator's incentive to take profits may have an adverse effect on returns to the community through the conversion of potential public benefits into private benefits.

10.6.9 Conclusion

Much of the economic rhetoric around structural reforms to state lotteries (such as those by the Productivity Commission and others), as a consequence of competition policy, falls well short on providing a convincing argument that:

- is supported by evidence or quantifiable data;
- shows that regulatory changes and competition in state lotteries will provide increased public benefits; or
- leads to a conclusion that a change to the current Western Australian regime is necessary.

In summary there is no evidence that suggests that the unique regime that exists in Western Australia and the significant public benefits provided by the current regime, can be duplicated by alternative regulatory models.

There is however evidence that suggests that the cost of an alternative regulatory regime, plus the replication of administration systems and other operational costs and the segmentation of lotteries market would most likely result in lower returns to the State and the community, and a net reduction of public benefits.

It is therefore recommended that the existing regime in Western Australia be maintained on the basis of it effectiveness and efficiency and the net public benefits it delivers for the State.

10.7 PAINTERS

10.7.1 Background

The first review of the *Painters Registration Act 1961 (WA)*was completed in 1998. The review concluded that the current system of mandatory licensing was too restrictive and should be removed. The review recommended a certification scheme be developed to allow consumers to readily identify painters who possess particular skills. It also recommended negative licensing be introduced.

However, due to concerns about the rigor of the analysis of the first review, a second review was conducted which was endorsed by Western Australia in 30 October 2003.

The review recommended that the following restrictions on competition be removed or lessened:

- the definition of 'painting' be amended to specifically exclude mural and streetscape painting from the regulatory regime;
- removing the Board's power to regulate 'do-it-yourself' painting;
- allowing for differential registration requirements so that the full requirements of licensing would not apply to specific market segments – such as fence painting;
- allowing Ministerial exemption of specific market segments where registration is not in the public interest;
- increasing the monetary threshold for painting work which would require the use of a licensed painter;
- reducing the age at which a person may be registered from 21 to 18; and
- providing for the automatic registration of persons who have completed a painting apprenticeship without the need for those persons to undertake further examinations.

A public interest justification is provided (below) which provides evidence that registration is in the public interest and should be retained.

10.7.2 Public Interest Test

The following outlines the reasons for maintaining the painters registration arrangements in Western Australia.

Benefits

A publicly maintained and easily accessible register of painters minimises transaction costs for consumers in locating a competent service provider.

There is significant information asymmetry between painting service providers and consumers, particularly in relation to assessing the ability of the painter; the quality of particular paints; and the elements of appropriate surface preparation for painting. As contrasted with goods, inspection prior to purchase of painting services by the consumer is not feasible. Registration redresses this information asymmetry by providing consumers with a minimum standard assessment of painting service providers.

The cost of rectifying substandard painting work can be substantially more than the initial cost of that work because of the need to remove the substandard application; address any preparation faults and then repaint the surface concerned. Costs also are often greater because in can take some significant time for faulty painting work to come to the consumer's attention, in which time market prices are likely to have risen. Registration helps to protect consumers from the costs of provider failure arising from substandard work by establishing a minimum standard assessment of painting service providers. Market evidence shows that there is a long history of consumer detriment being caused to consumers by itinerant, unregistered painters performing substandard and over priced work. These persons tend to target vulnerable consumers – especially the elderly.

Persons providing painting services to consumers frequently have access to the consumer's premises – often in the absence of the owner/occupier. Registration, including fit and proper person assessments, reduces the risk of provider failure through criminal conduct resulting in personal injury or property loss.

Registration based on minimum educational and/or experience qualifications supports public policy initiatives intended to promote apprenticeships and industry training.

Based on changes to the registration system recommended in the legislative review of the *Painters Registration Act 1961*, registration will only apply to those service providers who carry on the business of painting and who charge above a prescribed minimum amount. Subject to the legislative amendments:

- registration will not apply to "do-it-yourself" painting or mural or streetscape painting;
- limited registration with lesser requirements will apply to activities such as roof coating, fence painting and surface coating; and

- exemptions from registration will be available where registration is shown to be inappropriate or not in the public interest.

Registration is accompanied by alternative dispute resolution processes which reduce costs to consumers and service providers while also reducing costs to the general community by minimising disputes being dealt with by the court system.

The registration system is low cost ($420,000 in 2002 for a registration system applying to approximately 1.7 million Western Australians. Abolition of registration is unlikely to reduce these costs. The absence of registration and the Painters Registration Board is likely to result in more painters joining the Master Painters Association with costs to be passed on to consumers (less than 8% of painters were members of the MPA in 2002). The absence of the Painters Registration Board is also likely to see disputes referred to either the Builders Registration Board or the Department of Consumer and Employment Protection with costs being met by the building industry (ultimately consumers) or taxpayers. The absence of the Painters Registration Board's technical advice and examination services is also likely to increase dispute resolution costs for all parties by requiring the use of higher cost commercial services.

Registration of painters in Western Australia is consistent with the situation in New South Wales, Queensland and South Australia, all of which require painters to be licensed to carry on business although in these States licensing is done pursuant to general building industry licensing.

Despite a public review process, no evidence was provided by any stakeholder asserting that registration had adversely affected the supply of painting service providers in Western Australia. (The total number of registered painting service providers increased by 9.7% between 1998 and 2002).

Costs

Registration imposes administration costs on registered painting service providers in Western Australia to fully fund the scheme of registration. These costs are passed on to consumers of painting services. However, as noted, the registration system is low cost ($420,000 in 2002 for a registration system applying to approximately 1.7 million Western Australians) and abolition of registration is unlikely to reduce these costs.

Registration increases entry costs for persons wishing to enter the painting industry due to educational and training qualifications and registration fees. Many unlicensed trades comparable to painting require the completion of training or apprenticeships and these costs cannot be regarded as a cost purely consequent on the registration system. The costs associated with completing the required TAFE course, which can be completed part-time, are regarded as minimal. In addition, the encouragement of training and apprenticeships is regarded as having broad community benefits. The costs of being registered in 2003 were: $160 (individual), $100 (partnership) and $240 (company). These costs are regarded as minimal. A comparison of painting costs in various jurisdictions undertaken in 1997 disclosed no significant variation in costs of residential painting in Western Australia as compared with other jurisdictions.

Registration imposes a barrier to entry to the painting industry and therefore limits the potential for competition in the supply of services both by restricting new entrants and by limiting specialist or innovative services. This cost has not been quantified. The proposed legislative changes to the registration scheme will limit this cost because:

- registration will not apply to "do-it-yourself" painting or mural or streetscape painting;
- limited registration with lesser requirements will apply to activities such as roof coating, fence painting and surface coating; and
- exemptions from registration will be available where registration is shown to be inappropriate or not in the public interest.

As noted above, despite a public review process, no evidence was provided by any stakeholder asserting that registration had adversely affected the supply of painting service providers in Western Australia.

10.7.3 Conclusions

It is concluded that the costs associated with the registration of painters in Western Australia, as proposed to be amended, are outweighed by the benefits.

11 ATTACHMENT 5: LEGISLATION REVIEW COMPENDIUM FOR WESTERN AUSTRALIA

WESTERN AUSTRALIA'S LEGISLATION REVIEW COMPENDIUM

Agency Abbreviations

The following abbreviations are used in the 'Agency' column of the Western Australian legislation review timetable.

A	Department of Agriculture
BAG	Board of the Art Gallery of Western Australia
CALM	Department of Conservation and Land Management
CD	Department for Community Development
CEP	Department of Consumer and Employment Protection
CHA	Country Housing Authority
CSB	Coal Industry Superannuation Board
DET	Department of Education and Training
DH	Department of Health
DOIR	Department of Industry and Resources
DRGL	Department of Racing, Gaming and Liquor
EP	Department of Environmental Protection
EPRA	East Perth Redevelopment Authority
ES	Department of Education Services
F	Department of Fisheries
FESA	Fire and Emergency Services Authority
FPC	Forest Products Commission
GC	Gold Corporation
GESB	Government Employee Superannuation Board
HW	Department of Housing and Works
IA	Department of Indigenous Affairs

IC	Insurance Commission
J	Department of Justice
LGRD	Department of Local Government and Regional Development
LI	Department of Land Information
OE	Office of Energy
OWP	Office of Water Policy
P	Police Service
PC	Department of the Premier and Cabinet
PI	Department of Planning and Infrastructure
PTT	Perth Theatre Trust
RIA	Rottnest Island Authority
SBDC	Small Business Development Corporation
SR	Department of Sport and Recreation
SRT	Swan River Trust
TF	Department of Treasury and Finance
WALA	Western Australian Land Authority
WCRC	Workers Compensation and Rehabilitation Commission

LEGISLATION REVIEW SCHEDULE: WESTERN AUSTRALIA

Updated to 5 April 2004

Name of legislation	*Agency*	*Major restrictions*	*Review activity*	*Reform activity*
Aboriginal Affairs Planning Authority Act 1972 and Regulations	IA	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.	Review completed in 1997. Review concluded that 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. Recommended retaining the restrictions.	The Government endorsed the review recommendations. Act retained without reform.
Aboriginal Communities Act 1979 and By-laws	IA	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.	Review completed in 1997. Review concluded that effects on the general economy are not significant. Nonlegislative 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. Recommended retaining the powers of the communities to regulate access and the availability of deleterious substances on the grounds of public health and cultural preservation.	The Government endorsed the review recommendations. Act retained without reform.

Aboriginal Heritage Act and Regulations 1974	IA	Access to Aboriginal lands containing protected sites is restricted.	Review completed in 1997. Review concluded the restriction protects the cultural heritage of the State and ensures that sites of historical and cultural significance are not damaged or destroyed. Noted the restrictions on competition contained in the legislation are in the public interest and should be retained.	The Government endorsed the review recommendations. Act retained without reform.
Administration Act 1903 and Regulations	J	The Act treats natural persons differently from other classes of administrators of intestate estates as regards a requirement to obtain surety.	Review completed in 1997. 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. Recommended retaining the restriction as it was found to be in the public interest. 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; and making this maximum amount consistent with corresponding provisions of the Financial Institutions Code (WA).	Amendments made under the Acts Amendment and Repeal (Financial Sector Reform) Act 1999 removed the restrictions that were to be addressed through the recommendations of the National Competition Policy (NCP) review of this Act.

Aerial Spraying Control Act 1966	A	Licenses aerial spray contractors.	National review completed in 1999. See the Agriculture and Veterinary Chemicals (Control of Use) Act 1992 (Victoria).	See the Agriculture and Veterinary Chemicals (Control of Use) Act 1992 (Victoria). Reform complete. However, the Act is to be replaced with regulations under the Agriculture Management Bill, currently being drafted.
Agricultural Produce (Chemical Residues) Act 1983 and Regulations	A	Restricts sale, movement and destruction of chemically affected produce. Requires analysts to have minimum qualifications.	Not on WA's legislation review program (LRP) but reviewed as part of the national review of agvet chemicals. See the Agriculture and Veterinary Chemicals (Control of Use) Act 1992 (Victoria).	Reform complete. However, the Act is to be replaced by regulations under the Agricultural Management Bill being drafted.
Agricultural Products Act 1929 and Regulations	A	Regulates the packing and sale of agricultural products.	Review by officials completed. Review recommended repealing all codes and replacing these with regulations on labelling.	Codes have been repealed. The legislation will be superseded by the Agriculture Management Bill, scheduled for introduction in 2004.
Agricultural Protection Board Act 1950	A		Review by officials, in conjunction with review of other agricultural protection Acts, completed. Review found the Act did not restrict competition.	Act retained without reform.
Agriculture Act 1988	A		Review by officials, in conjunction with review of other agricultural protection Acts, completed. Review found the Act did not restrict competition.	Act retained without reform.
Agriculture and Related Resources Protection Act 1976 and Regulations	A	Restricts importation of some plants or animals. Requires landholders to control pests and diseases. Spraying regulations. Raises rates on pastoral land. Restricts the storage of agricultural chemicals.	Review by officials, in conjunction with review of other agricultural protection Acts, completed. Review found the Act did not restrict competition, but nevertheless recommended:	Review recommendations are being implemented through the Agricultural Management Bill, which is currently being drafted.

			• repealing the spraying regulations (as when amendments are made to Health (Pesticides) Regulations 1956) and rewriting so that aerial operators are subject to the same licensing regimes as other pesticide operators; but • retaining powers to control use and other restrictions.	
Agriculture and Veterinary Chemicals (Western Australia) Act 1995 and Regulations	A	Imports the Agricultural and Veterinary Chemicals Code (national registration scheme) into State jurisdiction (see the Australian Government Agricultural and Veterinary Chemicals Code Act 1994).	National review completed in 1999 (see the Australian Government Agricultural and Veterinary Chemicals Code Act 1994).	Reform incomplete, due to national processes. See the Australian Government Agricultural and Veterinary Chemicals Code Act 1994. The State's Act imports the Federal legislation, so any changes must first be made at the national level.
Albany Port Authority Act 1926 and Regulations	PI	Restrictions on market entry and conduct.		Act repealed and replaced by the generic Port Authorities Act 1998. Reform complete.
Albany Woollen Mills Agreement Act 1976	PI	Differential treatment.	Review not required.	Act repealed.
Anatomy Act 1930	DH	Licensing.	Review completed in 2000. Review found that the Act contained no restrictions that had any effect on competition so as to warrant assessment.	Act retained without reform.
Anglo-Persian Oil Company Limited (Private) Act 1919	HW	The Acts define the relationships, rights and duties of oil companies, local government authorities and the Minister for Works in	Review completed in 1998. Review identifies public benefits of restrictions identified as:	The Government endorsed the review recommendations. Act retained without reform.

		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.	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. Review 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.	
Animal Resources Authority Act 1981	DH		Review by officials completed. Review found the Act contains no restrictions on competition.	Act retained without reform.
Architects Act 1921 and Regulations	HW	Restrictions on registration, entry requirements, reservation of title, disciplinary processes, business conduct (including require Architects Board approval for advertising), and business licensing.	National review conducted by the Productivity Commission (PC) completed in August 2000 (publicly released November 2000). PC review involved public consultation via public release of issues paper, draft report, consultation, public hearings and receiving submissions. Review recommended repeal of Act. The State review and its recommendations were endorsed by Cabinet on 17	The public consultation period for the Architects Bill 2003 closed on 4 April 2003. The major change arising from the public consultation period is the composition of the Architect's Board will half consist of registered architects to provide the necessary architectural understanding for the board to carry out its functions. The Bill was introduced into Parliament on 26 November

			December 2001. The State review found the Act should be amended as follows: • composition of the Architects Board will be broadened with consumer and educational representatives; • removal of the restrictions on ownership or control of corporations or firms; and • removal of restrictions on age, advertising, and use of derivatives of the word architect where such use is not false or misleading. A States and Territories working group developed a national response to the PC review. WA endorsed the review of the Act in December 2001. Cabinet approved the drafting of amendments to the Act in March 2002 in response to the review.	2003.
Art Gallery Act 1959	BAG	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. Regulations specifying the conditions and restrictions under which the public may be allowed to examine works of art in the Art	Review completed. Review concluded that 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. Review recommended amending the Act to give the	Act retained without reform. In May 2002, the Government endorsed the Minister's decision not to support the review's recommendation to amend the Act to give the Board of the Art Gallery discretionary powers in the sale of art works in the Art Gallery or in any other place under the management and control of the Board.

		Gallery and other places under the management and control of the Board.	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. The proposed amendment would allow the Gallery some flexibility to sell artworks from its premises should the need or desire arise. 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.	
Artificial Breeding of Stock Act 1965	A	Restricts premises for supplying semen and other reproductive material. Licenses artificial breeders. Restricts importation of reproductive material.	Review by officials, in conjunction with review of a range of other agricultural protection Acts, completed. Review recommended: • repealing all restrictions; • introducing new less restrictive regulations on control of diseases; and • voluntary licensing of artificial breeders.	This legislation will be superseded by the Agriculture Management Bill, scheduled for introduction in 2004.
Auction Sales Act 1973 and Regulations	CEP	Licensing of auctioneers, entry requirements (fit and proposer person), requires 2 years' experience on restricted licence before general licence), the reservation of practice, business conduct (maintenance of records in relation to livestock and vendor accounts).	Discussion paper released in September 2000 inviting submissions. The review has now been endorsed by Government, recommending that: the licensing system be retained until a full legislative review of the Act is completed within the next 12 months; unless	

			justified by new reasons arising from that review, the licensing system should be repealed; and if licensing, or some other form of occupational regulation, is justified after completion of a full legislative review, then the administration of such a system should be the responsibility of a single Government organisation. A general review of the Act is presently being conducted by the Department of Consumer and Consumer Protection following completion of the NCP review.	
Australian Government Oil Refineries Limited (Private) Act 1940	DOIR	Licensing.	Review completed. Review 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 (see the Anglo-Persian Oil Company Limited (Private) Act 1919).	Act retained without reform. Reform complete.
Australian Soccer Pools Bloc: Rules for Subscriber Participation	DRGL	Licensing.		Act repealed and replaced by the Lotteries Commission (Soccer Pools) Rules 1996.
Beekeepers Act 1963	A	Requires registration of all beekeepers and branding of hives. Restricts importation, antibiotic use and testing. Imposes standards on honey.	Review by officials, in conjunction with review of a range of other agricultural protection Acts, completed. Review recommended retaining all restrictions except to reconsider those relating to honey standards and nuisance provisions.	This legislation will be superseded by the Agriculture Management Bill, scheduled for introduction in 2004.

Betting Control Act 1954 and Regulations	DRGL	Licensing.	Review in conjunction with the Totalisator Agency Board Betting Act 1960, completed in 1998. Of the 42 restrictions analysed in the review, the legislative provisions pertaining to 20 restrictions were recommended for repeal or amendment including: • relaxing restrictions on the operation of totalisators other than by the Totalisator Agency Board; • relaxing restrictions on bookmakers and their operations; • removing limits on bets in the regulations, leaving the racing clubs to set limits as they see fit; and • relaxing some restrictions on the operations 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. The Government endorsed some of the review recommendations.	The Betting Legislation Amendment Act 2002 implemented the recommendations of the review. The Bill provided for the establishment of corporate licensing structures for bookmakers and the removal of the restriction on bookmakers fielding only during race meetings. The Bill also amended the *Totalisator Agency Board Betting Act 1960* to ensure that no claim may be made against the TAB in relation to a bet that has been made with, or accepted by, the TAB. Recommendations not endorsed include the removal of bookmakers' betting limits and the removal of the prohibition on the licensing of additional off course totalisators. The Government has not provided a public benefit argument for their retention.
Biological Control Act 1986	A	Makes provision for the biological control of pests in WA. Complementary to Australian Government legislation. Act does not restrict competition. Act requires a transparent public inquiry process and review to	Deleted from the LRP as the Council of Australian Governments (CoAG) Committee on Regulatory Reform (CRR) determined that	Reform complete.

		determine the net public benefit of a biological control release.	the legislation has no anticompetitive impacts.	
Boxing Control Act 1987 and Regulations	SR	Registration (boxers, trainers, promoters and judges).	Departmental review completed in 1997. Consultation involved submissions. Review found that the restrictions were in the public interest.	The Government endorsed the review recommendations. Legislation retained without reform.
Bread Act 1982	*CEP*	Restrictions on market entry. Restrictions on delivery time for bread. Requirements for marking vehicles delivering bread.	Review by officials completed. Review recommended repeal of the Act.	Repeal of this Act was incorporated into the Acts Amendment and Repeal (Competition Policy) Act 2003, which was proclaimed on 20 April 2004. Reform is now complete.
British Imperial Oil Company (Private) Act 1925	DOIR	Licensing.		Act retained without reform.
Builders Registration Act 1939 and Regulations	CEP	Licensing, registration, entry requirements (training and seven years practical experience, age, good character, 'sufficient material and financial resources'), the reservation of practice, business licensing.	Review, in conjunction with the Home Building Contracts Act 1991, completed in 2002. Proposed recommendations included reducing restrictions on owner builders, expanding the scope of conditional licences, and expanding the coverage of the Act to the whole State. In May 2002, the Government endorsed the review recommendations that the following restrictions on competition in the Act be amended: • prohibition of unregistered builders to be amended to allow a limited number of builder categories	

			consistent with the Building Code of Australia; • conditional licence: will be amended to allow all potential builders rather than just those who have practised in non-covered regional areas to obtain conditional registration; and • journeyman builders: will be removed as a special case of conditional licences because it is redundant.	
Bulk Handling Act 1967 and Regulations	A	Co-operative Bulk Handling Limited (CBHL) granted sole right to receive and deliver grain until 31 December 2000 subject to obligation to charge uniform prices and to receive all grain tendered.	Departmental review completed in 2002. Review recommended repeal of all remaining restrictions on competition except the requirement that CBH accept all grain tendered to it. It also recommended retention of the requirement that CBH allow anyone to use its port facilities on payment of prescribed charges, and that the Government continue to monitor the need to establish an access regime for these facilities.	The Bulk Handling Amendment Act 2002 repealed the major remaining restrictions on competition. Reform complete.
Bunbury Port Authority Act 1909 and Regulations	PI	Restrictions on market entry and conduct.	Review not required.	Act repealed and replaced by the generic Port Authorities Act 1998.
Bush Fires Act 1954 and Regulations	FESA	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. Requirement on local governments to	Review completed in 1997. Review concluded the restriction on the lighting of fires and the requirement to maintain fire breaks is a very minor restriction on	The Government endorsed the review recommendations. Amendments to this Act were incorporated into the Acts Amendment and Repeal (Competition Policy) Act 2003,

		provide firefighting equipment and insure voluntary firefighters.	competition. This restriction is clearly in the public interest as it reduces the likelihood of fires. Recommended retaining the restriction. Also noted that 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. Recommended retaining the restriction. Review also recommended that Government businesses be subject to the same fire control requirements as other businesses.	which gained assent on 15 December 2003 and was proclaimed on 20 April 2004. Regulations prescribing certain government agencies for the purposes of fire control requirements will be progressed following proclamation.
Business Franchise (Tobacco) Act 1975	DH	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.	Review completed in 1997. Review concluded that 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. Recommended retaining the restriction.	The Government endorsed the review recommendations. Act retained without reform.

Camballin Farms (AIL Holdings Pty Ltd) Agreement Act 1985	PI	Differential treatment	Review not required.	Legislation has been repealed in the Statutes (Repeals and Minor Amendments) Bill 2001, which was assented to on 15 December 2003.
Caravan Parks and Camping Grounds Act 1995	LGRD	Competitive neutrality, and licensing.	The Caravan Parks and Camping Grounds Advisory Committee, a committee comprising government and industry representatives considered matters to do with restrictions in both the Act and associated regulations. The review found that: • regulation 49, which prohibits the issue of a licence for a transit park or a nature based park if there is a licensed caravan park or camping ground within 50 kilometres, should be removed; and • the exemption of State public sector bodies from the provisions of the Act should be retained and further examined as part of the general legislative review of the Act and The review was endorsed by Government in April 2004, with the Minister for Local Government requested to report back to the Expenditure Review Committee on the exemption restriction by 30 June 2004.	Amending legislation to be drafted. Further review to be completed by 30 June 2004.

Carnarvon Banana Industry (Compensation Trust Fund) Act 1961	A	Trust fund provides compensation for storm damage that restricts the entry of potential insurers to this market. Subsidised compensation is available only to Carnarvon growers.	Review by officials completed. Review recommended that the Act be repealed.	The Act was repealed on 28 June 2000. Reform complete.
Casino (Burswood Island) Agreement Act 1985 and Regulations	DRGL	Licences, restrictions on games, regulation of operations.	Review completed in 1998. The following restrictions found to be in the public interest: • limits on prizes and play amounts for amusement games with prizes; • limits on the number of bingo permits; • payout ratios and minimum and maximum wagers for minor lotteries; • the ability to set licence fees and taxes should remain, measures taken to ensure that in future, competing casino operators are treated equally and that licence fees are limited to cost recovery; • the licensing of casinos, games and the rules of games, and employees; • the approval needed for Casino supply contracts; • 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;	The Government endorsed the review recommendations. Main restrictions on conduct of casinos and casino games retained. The exclusive casino licence has expired and has not been renewed. Other entry barriers not in the public interest were removed and the government is negotiating the remaining entry restrictions with the casino operator.

			• the period of exclusivity for the Casino; • the conditions imposed on new casinos beyond the period of exclusivity; and • the monopoly over Casino style games and variants restricted to Burswood and any new casino beyond the period of exclusivity.	
Casino Control Act 1984	DRGL	Licensing, market conduct, and operations.	Review completed in 1998.	Exclusive licence expired and was not renewed. Other barriers to entry that are not in the public interest were removed. The Government is negotiating remaining entry restrictions with the casino operator.
Cattle Industry Compensation Act 1965	A	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.	Review by officials completed in 1998. Review recommended: • retaining the restrictions; and • amending the Act 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'.	To be repealed when planned legislation for grazing industry health protection funding is drafted during 2003-04.
Censorship Act 1996	J	Restrictions on the publication and possession of a range of media.	Review not required. Removed from LRP.	Act replaced the Censorship and Films Act 1947, the Video Tape Classification and Control Act 1987 and the Indecent Publication and Articles Act 1902.
Censorship and Films Act 1947	J	Licensing.	Review not required. Removed from LRP.	Act repealed.

Charitable Collections Act 1946 and Regulations	CEP	Licensing.	Review not required.	These Acts will be repealed upon enactment of a Public Collections Bill. The Bill is expected to be introduced into Parliament during 2004.
Chicken Meat Industry Act 1977 and Regulations	A	Prohibits supply of chickens unless under an agreement approved by the Industry Committee. Processing plants and growing facilities must be approved.	Review completed in 1997. Review recommended that the Government should: • retain the industry committee's power to set industry-wide supply fees, subject to allowing growers to opt-out of collective negotiations; and • remove restrictions on processor and grower entry. Review also recommended that the collective bargaining arrangements be reviewed again after five years.	Review recommendations were implemented through the Acts Amendment and Repeal (Competition Policy) Act 2003, which gained assent on 15 December 2003. The Act was proclaimed on 20 April 2004.
Chiropractors Act 1964	DH	Restrictions on entry, registration, title, practice, and disciplinary provisions.	Review of health practitioner legislation completed. Issues paper released October 1998, and Key Directions paper released June 2001. It proposed removing prescriptive advertising restrictions; requiring practitioners to hold professional indemnity insurance; removing restrictions on business ownership; and retaining broad practice restrictions for three years pending the outcome of the core practices review (which is under way). Core practices Discussion Paper was released in March 2003.	In April 2001, the Government approved the drafting of new template health practitioner Acts to replace the health professions legislation. The legislation will be introduced into Parliament as soon as possible.

City of Perth Parking Facilities Act 1956 and Regulations	PI	Licensing.	Review not required.	Act repealed.
Coal Industry Superannuation Act 1989	CSB	Competitive neutrality.	Review completed. Review found that clause 22, providing the Government assistance for the Coal Industry Superannuation Fund, should be removed as it restricts competition by conferring a competitive advantage on the fund. Review also considered clauses 14 and 15, setting out mandatory contributions to the Fund from members and employers. The review concluded that these restrictions were in the public interest due to economies of scale and reduced administration costs, and should be retained.	Review endorsed by the Government in February 2003. Legislative amendment required.
Community Services Act 1972 *Community Services (Child Care) Regulations 1988*	CD	Licensing, standards, operating procedures	NCP review completed in June 2002. Review recommended retaining the restrictions because they are in the public interest, and expanding the current three-yearly review process of the Regulations to encompass day care outside of school hours. Another recommendation was to consider, via the three-yearly review process, changing prescriptive regulations to a more outcome-based system within the regulatory framework. Cabinet endorsed the review	The Children and Community Development Bill 2003 repeals the Child Welfare Act 1947, the Welfare and Assistance Act 1961 and the Community Services Act 1972. The Bill had its second reading following introduction to the Legislative Assembly on 4 December 2003. The new Act, among other things, makes provisions for the licensing of childcare services.

			recommendations on 10 February 2003.	
Conservation and Land Management Act 1984	CALM	Licensing of timber collection and of taking of other resources. Administrative discretion over how licences and produce are allocated and priced. Permits to occupy and use State forest. Registration of timber worker. Restrictions relating to apiary permits granted under the CALM Act include: * limits on who can have an apiary: a person must be registered as a beekeeper under the *Beekeepers Act 1963* and must maintain at least 25 bee hives in the State to be eligible for an apiary permit (Reg 73(2)); and * limits on the number of permits a person may hold: no more than five permits can be held for every 50 hives kept by the person, for the areas defined by CALM as the south-west zone; and no more than four permits for every 50 hives kept by the person, for the remainder of the State (Reg 73(3)).	In 1999 a review by an independent economic adviser recommended the repeal of: • various limits on beekeeping in State forests; and • the exemption of State forest tree values from local body rating. In May 2002, the Government endorsed the review recommendations. Separately, in 2000, the Act was amended by: • the Conservation and Land Management Amendment Act 2000; and • the Forest Products Act 2000. These Acts vested State forests and other lands in the Conservation Commission and established the Forest Products Commission to undertake commercial forestry functions on State forests and private land. A review of this amending legislation was endorsed by Government in April 2004. The review found that the restrictions in the Acts provide a net public benefit and should	Rating exemptions have been removed via the Acts Amendment and Repeal (Competition Policy) Act 2003, which gained assent on 15 December 2003 and was proclaimed on 20 April 2004. Regulations 73(2) and 73(3) have been repealed from the Forest Management Regulations 1993 under the Forest Management Amendment Regulations 2003, published in the Government Gazette of 12 August 2003. Amendments to the Forest Products Act 2000 to allow for *in toto* pricing of forest products will be progressed during 2004.

			be retained. The Forest Products Act 2000 will be amended as suggested by the review to allow for an *in toto* approach to pricing.	
Consumer Affairs Act 1971	CEP		Review completed. Review recommended that certain restrictions be maintained. In addition, to avoid unnecessary duplication, the review recommended that the product safety provisions of this Act and the Fair Trading Act 1987 be combined in a single Act to remove unnecessary duplication. The review was endorsed by Cabinet on 4 August 2003.	The Act currently is the subject of a general legislative review concurrent with review of the Fair Trading Act.
Consumer Credit (Western Australia) Act 1996	CEP	Regulates the provision of consumer credit.	National review completed. Review recommended maintaining the current provisions of the code, reviewing its definitions to bring term sales of land, conditional sales agreements, tiny term contracts and solicitor lending within the scope of the code. The review also recommended enhancing the code's disclosure requirements. The Ministerial Council on Consumer Affairs endorsed the final report in 2002 and referred it to the Uniform Credit Code Management Committee which is facilitating the resolution of some issues.	Amendments currently are being progressed under a template legislation model to ensure national consistency.
Cooperative and Provident Societies Act 1903	CEP	Licensing.	Act recommended for repeal.	This Act will be repealed upon the enactment of the proposed Co-operatives Bill. This Bill is

				subject to current national consideration in respect to an agreement for template legislation.
Country Slaughterhouse Regulations 1969	DH		Review by Health Department officials completed.	Regulations repealed by Regulation 28 of the Health (Meat Hygiene) Regulations 2001.
Credit (Administration) Act 1984 and Regulations	CEP	Restrictions on licensing, and disciplinary provisions.	Review by the Ministry of Fair Trading completed with public consultation. Review recommended that the licensing requirements be repealed and that many of the powers of the Tribunal and Commission be removed, but that the disciplinary provisions are retained on public interest grounds.	The Government endorsed the review recommendations. A public benefit argument for retaining the licensing requirement for payday lenders made it necessary to reassess the NCP review recommendations, to determine whether the amendments needed minor modifications. The original NCP report was re-examined to account for the relevant market changes. Amended report endorsed by Cabinet on 4 August 2003. The report recommended that the Act be amended to replace the licensing requirement for credit providers with a system of registration coupled with negative licensing; and replace the prohibition against persons having a business as a credit provider when in partnership with an unlicensed person. WA is still to implement the endorsed recommendations through amendment of the Act.
Credit Act 1984 and Regulations	CEP	Differential treatment.	Review completed in 2000. Review recommended repeal subject to further consideration	Implementation of reform is pending in light of continuing

			of impact on contracts entered into prior to 1 November 1996.	credit contracts under the Act.
Cremation Act 1929	DH	Licensing.	Review completed in 2002. Review found that the licensing requirements provide a net benefit to the public and recommended that they be retained.	The Government endorsed the review recommendations. Reform complete.
Curtin University of Technology Act 1996	ES	Competitive neutrality, and market power.	Review, conducted by the Office of Higher Education, completed in 1998. Review recommended that investment provisions be consistent between universities.	The Government endorsed the review recommendations. Amendments required.
Dairy Industry Act 1973 and Regulations	A	Vesting of milk in the Dairy Industry Authority. Farmgate price-setting for market milk. Market milk quotas. Licensing of farmers and processors.	Review by Agriculture WA officials, assisted by an industry working party, completed in 1998. Review recommended: • the retention of farm-gate pricing for market milk; • the continued vesting of all milk in the Dairy Industry Authority; and • the continuation of the licensing powers of the Authority. Review also found that quotas as a mechanism for ensuring year round supply were unnecessary, but recommended that quotas be retained for as long as farm-gate pricing continues.	In line with the March 2000 communiqué signed by all Australian Agriculture and Primary Industries Ministers committing to a national approach to dairy reform, WA passed the Dairy Industry and Herd Improvement Legislation Repeal Act 2000 on 27 June 2000, deregulating the industry from 1 July 2000. Reform complete.
Dampier Port Authority Act 1985 and Regulations	PI	Restricts market entry and conduct.		Act repealed and replaced by the generic Port Authorities Act 1998. Reform complete.

Dampier to Bunbury Pipeline Regulations 1998	OE			Regulations repealed on 1 January 2000.
Debt Collectors Licensing Act 1964 and Regulations	CEP	Licensing, entry requirements (age, good name and character, fit and proper person), the reservation of practice, and business conduct (trust accounts, fidelity bonds).	Departmental review completed in 2003. Review found many of the restrictions in the licensing system to be in the public interest, but recommended that limits on fees charged to creditors by debt collectors and the requirements for written contracts between creditors and debtors be removed. It also recommended that licensing be extended to cover debt collectors' employees. The Government endorsed the review recommendations.	Act requires amendment.
Dental Act 1939	DH	Restrictions on entry, registration, title, practice, and disciplinary provisions.	Review of health practitioner legislation completed. Issues paper released October 1998, and Key Directions paper released June 2001. It proposed removing prescriptive advertising restrictions; requiring practitioners to hold professional indemnity insurance; removing restrictions on business ownership; and retaining broad practice restrictions for three years pending the outcome of the core practices review (which is underway). Core practices discussion paper was released in March 2003.	In April 2001, the Government approved the drafting of new template health practitioner Acts to replace the health professions legislation. The legislation will be introduced into Parliament as soon as possible.
Dental Amendment Act 1996	DH	Licensing.	Review completed.	The Dental Amendment Act 1996 has been incorporated into the Dental Act.

Dental Prosthetics Act 1985	DH	Restrictions on entry, registration, title, practice, and disciplinary provisions.	Review completed. Key Directions paper released in June 2001, stating that ownership restrictions should be removed, but current practice restrictions would be retained for three years to allow the identification of core practices.	New health practitioner legislation is being drafted. This Act will be repealed.
Dried Fruits Act 1947	A	Grading of fruit. Registration of dealers and packing sheds. Maintenance of health standards.	Review by officials completed in 1997. Review recommended the Act be repealed.	Act repealed on 15 December 1998. Reform complete.
East Perth Redevelopment Act 1991 and Regulations	EPRA	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.	Review completed in 1997. Review 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. Recommended retaining restrictions.	The Government endorsed the review recommendations. Act retained without reform. Reform complete.
Eastern Goldfields Transport Board Act 1984 and Regulations	PI	Restrictions that gave the Board advantages arising from public ownership included: • nominating the Board as an agent of the	Review completed in 1997. Review concluded the Board needs to retain the powers to	Amendments to this Act were incorporated into the Acts Amendment and Repeal

		Crown; • implying a Government Guarantee on borrowings; • exempting the Board from payment of local government rates; and • allowing the Board to make by-laws and regulations governing the behaviour of patrons and other matters.	enable monies to be borrowed to continue to perform its role as a provider of public bus services in Kalgoorlie/Boulder. Recommended repealing restrictions on nominating the Board as an agent of the Crown and exempting the Board from paying local rates. Nonlegislative 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. Recommended retaining above restriction.	(Competition Policy) Act 2003, which gained assent on 15 December 2003 and was proclaimed on 20 April 2004. Reform complete.
Edith Cowan University Act 1984	ES	Competitive neutrality, market power.	Review, by the Office of Higher Education, completed 1998. Review recommended that investment provisions be consistent between universities. The Government endorsed the review recommendations.	Amended by the Acts Amendment and Repeal (Competition Policy) Act 2003, which gained assent on 15 December 2003 and was proclaimed on 20 April 2004. Reform complete.
Education Service Providers (Full Fee Overseas Students) Registration Act 1992	ES	Licensing of providers of education to overseas students.	Review considered by Government in April 2004. The review identified the following restrictions on competition, and recommended they be retained in the public interest: • the differential treatment between government funded providers and	Further review required.

			private providers of education services to overseas students; and • the registration requirements of education service providers. Government requested the Minister for Education and Training to reconsider the review so that: • consideration can be given to the reasons for the differential treatment arising from exemptions provided to some private schools under the regulations; • in accordance with the review recommendations, the policies and guidelines that underpin the Education Service Providers (Full Fee Overseas Students) Registration Act 1991 be reviewed in accordance with changes to the Commonwealth's Education Services for Overseas Students Act (2000) and the Migration Act (1958); and • in accordance with the review recommendation, the policies and guidelines that underpin the requirements dealing with the audit of non-government schools be reviewed, to provide	

			uniform audit conditions with other statutory providers such as universities and TAFE Colleges; and • wider consultation can occur during the review process.	
Electricity Act 1945 - Part 1 of 2	OE	Regulations concerning mandated supply; coordinator determines interconnection prices; restriction on sale/hire of non-approved electrical appliances; and uniform pricing.	Initial review completed in 1998. Review recommendations have been superseded by wider reform of the electricity industry.	The Government is proposing new legislation based on the recommendations of the Electricity Reform Taskforce.
Electricity Act 1945 - Part 2 of 2 (Electricity (Licensing) Regulations 1991)	OE	Regulations - licensing, entry requirements (apprenticeship/training and experience/exam, fit and proper), reservation of practice, and disciplinary processes.	A review of the legislation was endorsed by the Expenditure Review Committee of Cabinet in 2003. The review concluded that licensing of electricians is in the public interest, but further examination of some provisions is warranted. In April 2004, Government clarified its earlier decision, and requested the Minister for Consumer and Employment Protection to conduct a review of restrictions on electrical engineers and "do it yourself" electrical work.	Further review required.
Electricity Corporation Act 1994	OE	Exclusive franchise of Western Power; barrier to entry to generate electricity; vertical integration; and competitive neutrality restrictions.	Initial review completed. Further review being conducted as part of wider electricity sector reform. The Government endorsed the recommendations of the Electricity Reform Task Force.	Some minor competitive neutrality advantages have been removed by the Statutes (Repeals and Minor Amendments) Act 1998. Any remaining restrictions will be removed within the context of electricity reform implementation.

Employment Agents Act 1976 and Regulations	CEP	Licensing, entry requirements (fit and proper person), the reservation of practice, and business conduct (scale of fees, maintenance of records, no misleading advertising).	The review recommendations were to: • replace the requirement for employment agents to be licensed with a negative licensing scheme that will allow persons to be excluded from the employments agents industry if in breach of regulated standards or engaging in unjust conduct; • relax the requirement to provide employees with a "Notice of Employment" where provision of such notice is impractical, subject to the consent of the employee; • remove the need to seek approval of a scale of fees chargeable to employers; and • allow fees to be negotiated between employment agents and employers but preclude agents from demanding or receiving any fee that is unjust, where there is no prior agreement. The review also recommends that the following sections of the Act be retained: • the prohibition against charging of fees to employees; and • the requirements relating to the provision of statements of account to employees.	Act requires amendment.

			The Government accepted the review recommendations on 15 October 2003.	
Energy Coordination Act 1994	OE	Amended to introduce a gas licensing system that provides for regulation of companies operating distribution systems and supplying gas to consumers using less than 1 Terajoule per year.	Review of new provisions found restrictions were minimal and were the most cost-effective means of protecting small customers.	Act retained without reform. Reform complete.
Energy Operators (Powers) Act 1995 (formerly known as the Energy Corporations (Powers) Act 1979)	OE	Provided monopoly rights over sale of liquid petroleum gas (LPG) and provides energy corporations with powers of compulsory land acquisition and disposal, powers of entry, certain planning approval and water rights, and indemnity against compensation claims.	Review completed in 1998. Review recommended removal of monopoly over sale of LPG, and retention of land use powers of energy corporations. Land use powers necessary to facilitate energy supply.	Restrictions on LPG trading lifted with enactment of the Energy Coordination Amendment Act 1999 and the Gas Corporation (Business Disposal) Act 1999. Reform complete.
Environmental Protection (Diesel and Petrol) Regulations 1999	EP	Setting of fuel standards above national standards, thus protecting the local refinery.	New legislation.	
Environmental Protection Act 1986	EP	The ability to require an environmental impact assessment; licensing of occupiers of prescribed premises; exempting certain firms from EPA licensing; the requirement for firms to comply with the environmental standards set; and the power to prepare and publish environmental protection policies.	Review by independent consultants completed. Review found that restrictions should be retained.	The Government endorsed the review recommendations in 1997. Act retained without reform. Reform complete.
Esperance Lands Agreement Act 1960	PI		Review not required. Act to be repealed.	Legislation has been repealed in the Statutes (Repeals and Minor Amendments) Bill 2001, which was assented to on 15 December 2003.
Esperance Port Authority Act 1968 and Regulations	PI	Restrictions on market entry and conduct.		Act repealed and replaced by the generic Port Authorities Act 1998.
Exotic Diseases of Animals Act 1993	A	Powers to inspect, demand assistance and issue local quarantine orders. Powers to seize and destroy infected stock. Powers to control the movement of stock.	Review completed in 1998. Review recommended retaining the restrictions in the public interest.	The Government endorsed the review recommendation in March 1999. Act retained without reform.

Explosives and Dangerous Goods Act 1961	DOIR	The Act requires licences, permits, authorisations or approvals to be obtained as a means of regulating the various activities involving explosives and dangerous goods. 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.	Review completed in 1998. Review found that generally there are more efficient and effective ways of achieving the objectives of the legislation. The review considered more flexible approaches to controlling activities involving dangerous goods and found that these alternatives can also achieve the required safety and community protection objectives. The Government endorsed the review recommendations	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. The Government introduced the Dangerous Goods Safety Bill 2002 in December 2002. This legislation will repeal the Explosives and Dangerous Goods Act and the Dangerous Goods (Transport) Act. The Bill has passed the Legislative Assembly and received its second reading in the Legislative Council on 24 June 2003.
Fair Trading Act 1987	CEP	Regulates the supply, advertising and description of goods and services and, in certain respects, the disposal of interests in land, and to make provision with respect to certain unfair or undesirable trade practices, as to the conditions and warranties to be applicable in consumer transactions, and as to the conditions and warranties to be applicable in consumer transactions, and as to the establishment of Codes of Practice as between certain classes of suppliers and	The review was considered by Government in July 2003. The review supported the retention of: • product safety regulations and product safety recall orders; • product information standards;	Further review concurrent with the Fair Trading Act.

		consumers. Review endorsed by Cabinet on 4 August 2003.The report recommended that certain restrictions should be retained and that the product safety provisions of this Act and the Consumer Affairs Act 1971 be combined into a single Act to remove unnecessary duplication.	• product quality standards; • packaging standards; and • product safety orders or regulations. The report recommended that as part of the general review of the Fair Trading Act 1987 and Consumer Affairs Act 1971, consideration be given to combining the product safety provisions into a single Act and removing unnecessary duplication.	
Fertilisers Act 1977	A	Requires retailers to clearly label fertilisers and to handle them in such a way as to avoid contamination.	Review completed in 1997. Review recommended: • amending the Act to apply only to those fertilisers that pose a risk to agriculture; and • using less restrictive means to achieve the same objectives for other fertilisers. The Government endorsed the review recommendations in 1997.	This legislation will be superseded by the Agriculture Management Bill, scheduled for introduction in 2004.
Finance Brokers Control Act 1975	CEP	Registration, business licensing (with exceptions), advertising, limits on remuneration, conditions on how monies are kept on behalf of clients, auditing requirements and other conduct restrictions.	Review completed in 1999. Review 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	ASIC has not assumed responsibility for regulating the whole finance broking industry as anticipated at the time of the Temby Royal Commission. Widespread problems with the mortgage broking sector of the industry have come to light at a national level. WA is retaining and amending the Finance Brokers Control Act

			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. The review recommended repealing the Act and introducing 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 a self regulatory mechanism.	with an amendment Bill currently before Parliament. Other jurisdictions are likely to follow suit.
Firearms Act 1973 and Regulations	P	Registration (firearm repairers).	Review not required. Act removed from the LRP in view of a national approach to firearms policy.	No further action required.
Fish Resources Management Act 1994	F	Licensing of fishers. Prohibitions on market outlets. Input controls on boat, gear and fishing methods. Output controls such total allowable catches, quota, bag and size limits.	First review completed in 1999. Review recommended that the Government: • retain most of the existing restrictions; • in the rock lobster fishery: - commission an independent update on the net benefits of moving to output-based management; and - in the interim, remove the 150 pot maximum holding, and separate pot licences from boat	The Government has removed the 150 pot minimum holding restriction for rock lobster. In relation to rock lobster processing, it has established a new domestic processing licence from July 2003 that allows holders to establish processing facilities at multiple locations and to hold and grow lobsters for domestic sale, while retaining limits on the number of export processing licences. A structured process has been put in place to enable Government to review the

			licences; • amend the Act to clarify its objectives; and • integrate NCP principles into the ongoing fisheries management review cycle. The second review, of the rock lobster processing sector, recommended that the State Government remove limits on the number of number of domestic processing licences and provide licence holders the right to establish at multiple locations. In relation to fisheries generally, the Government has decided to: • include a clear statement of objectives in all fisheries management plans over the next 2-3 years; • schedule by June 2003 reviews of specific fisheries management plans against NCP; and • introduce by December 2004 a new framework consistent with NCP for individual holdings of access entitlements and licence transfers. In the rock lobster fishery, the Government has decided to retain input-based management until at least December 2006 pending review of the efficiency gains of moving to output-	current management framework for the rock lobster fishery by the end of 2006.

			based management.	
Fisheries Adjustment Schemes Act 1987	F	Ministerial discretion as to eligibility for compensation upon cancellation of fishing property rights.	No NCP implications identified.	Act retained without reform. Reform complete.
Fishing Industry Promotion Training and Management Levy Act 1994	F	Potential for levies to be imposed with differential impact on fishers.	No NCP implications identified.	Act retained without reform. Reform complete.
Fremantle Port Authority Act 1902 Act and Regulations	PI	Restricts market entry and conduct.		Act repealed and replaced by the generic Port Authorities Act 1998.
Friendly Societies Act 1894	J	Licensing.		Act repealed.
Fruit Growing Industry Trust Fund Act 1941	A		Review not required.	Act repealed. Reform complete.
Gaming Commission Act 1987 and Regulations	DRGL	Licensing for the conduct of games such as bingo, two-up and so on.	Review completed in 1998. Review recommended : • removal of restrictions on casino games for community gaming, two-up and bingo prize pools, subject to appropriate changes being negotiated in the Casino (Burswood Island) Agreement Act; • removal of lotteries restrictions to be removed or reduced, including: to allow for the licensing of suppliers of State lottery products by State Agreement; • amending the legislation so that lotteries conducted by organisations the subject of such an agreement are lawful lotteries;	Amendments are yet to be made. The Government is considering its response to the review recommendations.

			• allowing for licensing professional fundraisers; and • removing the definition of 'foreign lottery' from the legislation; and related amendments.	
Gas Corporation Act 1994	OE	Creates Gas Corporation to run certain publicly owned gas assets.		Act repealed in December 2000. Reform complete.
Gas Standards Act 1972 and Regulations	OE	Gas Standards (Gasfitting and Consumer Gas Installations) Regulations 1999 - gasfitters licensing, registration, entry requirements (knowledge and skills, fit and proper), reservation of practice.	The review was endorsed by the Expenditure Review Committee of Cabinet in 2003. The review concluded that licensing of gas fitters is in the public interest, but further examination of some provisions is warranted. In April 2004, Government clarified its earlier decision, and requested the Minister for Consumer and Employment Protection to review the manufacturing standards for gas appliances.	Further review required.
Gas Transmission Regulations 1994	OE	Access provisions.		Regulations repealed. Access and related matters now regulated under the Gas Pipelines Access (WA) Act 1998. Reform complete.
Geraldton Port Authority Act 1968 and Regulations	PI	Restricts market entry and conduct.		Act repealed and replaced by the generic Port Authorities Act 1998.
Gold Corporation Act 1987 and	GC	Deals with competitive advantages and	Review completed in 1999-	Review recommendations were

Regulations		disadvantages arising from government ownership.	2000. Review recommended removal of advantages enjoyed by the Gold Corporation and subsidiaries over other businesses operating in precious metals markets. The Government endorsed the review recommendations.	implemented through the Acts Amendment and Repeal (Competition Policy) Act 2003, which gained assent on 15 December 2003 and was proclaimed on 20 April 2004. Reform complete.
Government Employees Superannuation Act 1987	GESB	Limits on choice of funds.		Act repealed. Reform complete.
Government Railways Act 1904 and By-laws: Nos. 1 to 53, 59, 62, 63, 64, 68, 74. No 55 (rates) No 60 (passenger fares) No 75 (Auction Sales) No 76 (Licensed Porters)	PI	Access, market power, and competitive neutrality.	Review completed in 1998.	The Government Railways (Access) Act 1998 and the Rail Safety Act 1998 have addressed amendments removing various advantages and disadvantages conferred on the Commission. Reform complete.
Grain Marketing Act 1975 and Regulations	A	Prohibits export marketing of barley, canola and lupins other than by the Grain Pool of Western Australia (GPWA).	Act reviewed by the Department of Agriculture in 2002. This recommended retaining the export monopoly in respect of barley, canola and lupins subject to: • allowing free export of grain in bags and containers; • establishing a Grain Licensing Authority to license value-added grain exports and non-competitive bulk grain exports.	The *Grain Marketing Act 2002* was passed in November 2002 to provide for the deregulation of grain marketing upon similar moves by the Australian Government and, in the interim, to issue an export licence to CBH/GPWA and to establish a Grain Licensing Authority (GLA) to licence bulk exports by others except where this would have a significant impact on market power-related price premiums. Appointments to the Authority were announced in May 2003, and the Authority began issuing licences in October 2003. The Ministerial Policy Guidelines and the Regulations have

				resulted in the GLA granting numerous licences for bulk exports of prescribed grains lupins, canola and barley.
Hairdressers Registration Act 1946 and Regulations	CEP	Licensing, registration, entry requirements (good character, training and exam), reservation of practice and title, and disciplinary processes.	Review by independent consultants completed. Review recommended the hairdressers' registration scheme be retained and the provisions be extended to apply to the whole State and the Hairdressing Registration Board be given discretionary power to create different classes of registration. In February 2003, the Government endorsed the recommendation to retain the hairdressers' registration scheme.	
Health (Adoption of Food Standards Code) Regulations 1992	DH	As per the Food Standards Code (Australian Government).	Subject to the COAG Food Regulation Agreement 2000.	Repealed and replaced by the Health (ANZ Food Standards Code Adoption) Regulations 2001.
Health (Asbestos) Regulations 1992	DH	Licensing.	Review under way, as part of the review of the Health Act 1911.	Review incomplete.
Health (Cloth Materials) Regulations 1973	DH	Licensing.	Review under way, as part of the review of the Health Act 1911.	Review incomplete.
Health (Construction Work) Regulations 1973	DH	Licensing.	Review under way, as part of the review of the Health Act 1911.	Review incomplete.
Health (Drugs and Allied Substances) Regulations 1961	DH	Licensing.	Part of Galbally Review. Draft review report completed on 11 September 2000. Final review report given to the Australian Health Ministers Conference (AHMC) in early 2001.	The Department of Health is preparing a review of the Health Regulations. WA has already implemented some recommendations.

			Galbally Review concluded that most of the current controls provide a net benefit to the community as a whole in relation to the use of substances that have the potential to cause harm. The Review's final report presented to Health Ministers in January 2001. A Working Party of the Australian Health Ministers Advisory Council (AHMAC) was established to assist in the preparation of comments on the Review Report. AHMAC released the draft Response to the PIMC for comments on the draft AHMAC Working Party Response to the Review and the response takes account of the comments. The AHMC and CoAG are to endorse the response.	
Health (Food Hygiene) Regulations 1993	DH	Licenses food processors. Requires premises to be registered. Sets standards for safe food practices.	Review near completion. Report being drafted.	Review incomplete.
Health (Game Meat) Regulations 1992	DH	Requires slaughterers to hold minimum qualifications. Requires registration of field depots and processing facilities.	Review completed.	Regulations repealed and replaced by the Health (Meat Hygiene) Regulations 2001.
Health (Meat Inspection and Branding) Regulations 1950	DH		Review completed.	These regulations have been repealed. Reform complete.
Health (Pesticides) Regulations 1956	DH	Licensing.	Review under way, as part of the review of the Health Act 1911.	Review incomplete.
Health (Pet Meat) Regulations 1990	DH		Review under way, as part of the review of the Health Act	Review incomplete.

			1911.	
Health (Public Buildings) Regulations 1992	DH	Licensing.	Review under way, as part of the review of the Health Act 1911.	Review incomplete.
Health (School Dental Therapists) Regulations 1974	DH	Licensing.	Review under way, as part of the review of the Health Act 1911.	Review incomplete.
Health Act (Swimming Pools) Regulations 1964	DH	Licensing.	Review under way, as part of the review of the Health Act 1911.	Review incomplete.
Health Act 1911	DH	Licensing.	Review under way.	WA is preparing legislation to replace the Health Act 1911 which will include a Food Bill to adopt the Food Standards Code. Cabinet has approved phased replacement of the Act. Cabinet has approved drafting of the Food Bill, which will replace Part 8 of the Act.
Health Laboratory Services (Fees) Regulations	DH	Licensing.	Review completed.	Act repealed. Reform complete.
Health Services (Conciliation and Review) Act 1995	DH		Removed from the LRP.	Reform complete.
Hire Purchase Act 1959 and Regulations	CEP	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.	Review, by the Ministry of Fair Trading completed, with public consultation. 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. However, the review found that three provisions (relating to surplus from sale of goods, equitable relief and farm goods	The Act was amended via the Acts Amendment and Repeal (Competition Policy) Act 2003, which was proclaimed on 20 April 2004 to be effective on and from 1 May 2004. Reform is now complete.

			purchases) are not adequately reproduced in the new Code and are justified for retention in the public interest. The Government endorsed the review recommendations.	
Home Building Contracts Amendments Act 1996 and Regulations	CEP	Home building work contracts, dispute resolution procedures, and home building insurance arrangements.	Review, in conjunction with the Builders Registration Act 1939, completed in 2002. In May 2002, Government endorsed the review recommendations to amend the following: • directions from Water Corporation to be amended to include all relevant licensed water service providers or the Office of Water Regulation where no licensed water service provider exists; an • consumers may terminate contract when they are at fault: will be amended to allow termination only if both parties agree.	Amendments implemented by the Building Legislation Amendment Act 2000.
Horticultural and Produce Commission Act 1988	A	The Horticultural Produce Commission is empowered to raise compulsory levies from growers.	Review completed in 1997. Review recommended amending the Act 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.	Act amended. Now called the Agricultural Produce Commission Act 1988. Reform complete.
Hospitals (Licensing and Conduct of Private Hospitals)	DH	Licensing.	Review completed.	Hospital Regulations were dealt with in the Hospitals and Health

Regulations 1987				Services Amendment Bill 2002. The Bill was assented to on 8 July 2002. This addressed an uncertainty in the operation of the Hospitals and Health Services Act 1927 by clarifying that agencies established under the Hospitals Act may be created to carry out a power, as well as a duty or function. This amendment alleviates the uncertainty that potentially impacted on the operation of PathCentre.
Hospitals (Licensing and Conduct of Private Psychiatric Hostels) Regulations 1997	DH	Licensing.	The NCP review of the Hospitals and Health Services Act 1927 included these regulations.	
Hospitals (Service Charges) Regulations 1984	DH	Licensing.	The NCP review of the Hospitals and Health Services Act 1927 included these regulations.	
Hospitals and Health Services Act 1927	DH	• Regulatory system controls entry of firms or individuals into or out of the market for private sector health services (e.g. number of private hospital bed numbers at a facility and specifications of buildings); and • Fees charged for private patients treated in public hospitals are determined by the Governor.	An NCP review of this Act was completed in May 2001 and endorsed by the Expenditure Review Committee and Cabinet in December 2001. It was noted that the Review largely met the Competition Principles Agreement and that the proposed repeal and replacement of the legislation would fully meet the State's obligations under the Agreement.	The Department of Health intends to progress the development of new structural health services legislation to replace those parts of the Hospitals and Health Services Act 1927 that deal with public health system governance.
Hospitals and Health Services Amendment Act 1996	DH	Licensing.	The provisions of this Act have been incorporated into the Hospitals and Health Services Act 1927. An NCP review of this Act was completed in May 2001 and endorsed by the Expenditure Review Committee	No further action is required in relation to this Amendment Act.

			and Cabinet in December 2001.	
Human Reproductive Technology Act 1991	DH	Licensing.	Review completed. Review found that the Act contained no restrictions that had any effect on competition so as to warrant assessment.	Act retained without reform.
Human Reproductive Technology Amendment Act 1996	DH	Licensing.	Review completed. Review recommended no change.	Act retained without reform.
Human Tissue and Transplant Act 1982	DH	Licensing.	Review completed in 2000. Review found that the Act contained no restrictions that had any effect on competition so as to warrant assessment.	Act retained without reform.
Indecent Publications and Articles Act 1902 and Regulations	J	Licensing.	Review not required.	Legislation repealed and replaced by the Censorship Act 1996.
Industrial Relations Act 1979	CEP	Qualification requirements of office bearers of the Western Australian Industrial Relations Commission (WAIRC). Persons who have reached the age of 65 are ineligible for appointment to the Commission. Restricted access for public servants to the WAIRC. Restricted access to the Public Service Appeal Board or the Railway Classification Board (to public service officers or other Government officers or organisations). Restrictions on individual access to the WAIRC. Access is confined to unfair dismissal, denied common law contractual benefit and long service leave entitlements. Restricted representation of parties by legal practitioners. Common rule awards, which bind employers	In July 2003, the Government endorsed a Department of Consumer and Employment Protection (DOCEP) review of the Act, which was a revision of an earlier draft endorsed by the Government in 1998. In addition to this present review, DOCEP also conducted a review of the Labour Relations Reform Act 2002, which substantially amended to original Act. These amendments are dealt with in a separate review report. The *Labour Relations Reform Act 2002,* substantially amended the original Act. These amendments were considered in a separate	Reform complete.

		and employees to industry-wide awards. Restrictions on individual employees entering into industrial agreements. An organisation or association of employees can only enter industrial agreements. Registration requirements for employee and employer organizations.	review. The 2003 review also re-examined the matters that were identified in the previous review. The new review was endorsed by Government in July 2003. The review recommended that restrictions on access to the WAIRC and the composition of the WAIRC be retained. The review recommended that restrictions on individuals entering into employment contracts were also in the public interest and be retained.	
Industrial Training Act 1975 and Regulations	DET	Licensing.	Provisions in the Act governing apprentices and training providers were to be repealed and replaced by part 7 of the Vocational Education and Training Act 1996. However, as part 7 has never been proclaimed, in April 2004 Government requested the Minister for Education and Training to review the relevant provisions of the Act.	Regulations repealed and replaced by the VET Act. Review of some provisions required.
Infectious Diseases (Inspection of Persons) Regulations	DH	Licensing.	Review completed.	Regulations have been repealed.
Inquiry Agents Licensing Act 1954 and Regulations	P	Licensing.		Act repealed and replaced by the Security and Related Activities (Control) Act 1996. Reform complete.
Insurance Commission of Western Australia Act 1986	IC	Limits on investment and borrowing powers, Treasurer's guarantee, Competitive neutrality.	Review completed in 1998. Review concluded that the restrictions provide net public benefit primarily because they improve accountability and	Act retained without reform.

			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. The review recommended retaining the restrictions as they provide a net public benefit and are necessary to achieve the objectives of the Act.	
Jetties Act 1926 and Regulations	PI	Licensing, competitive neutrality.		Legislation to be repealed by the Maritime Bill and the Maritime and Transport Legislation Amendment and Repeal Bill, to be drafted.
Land Valuers Licensing Act 1978 Regulations	CEP	Licensing, entry requirements (member of Institute of Valuers or education and four years experience, and possibly exams), the reservation of title and practice, business conduct (including board setting maximum fees, code of conduct).	The 1999 departmental review of the Act was not finalised pending the findings of the Gunning Inquiry and the Temby Royal Commission into the finance broking industry. The review recommended the discontinuation of licensing and the Land Valuers Licensing Board. The Temby Royal Commission recommended that valuers be licensed. The Government endorsed the findings of the Royal Commission. The Government is examining review recommendations in light of the Gunning Inquiry. (Gunning Inquiry recommended replacing seven licensing boards including the Land Valuers Licensing Board, with a	No implementation is required. Reform complete.

			single authority to license finance brokers, builders, car dealers, land valuers, and real estate and settlement agents.) The Government endorsed the Royal Commission's findings, which constituted a public interest argument to support the licensing of land valuers. The NCP review was updated to reflect this endorsement and the amended NCP review was endorsed by Cabinet on 4 August 2003. The review found that the following restrictions were in the public interest and should be retained: • the requirement for land valuers to be licensed; • the criteria for licensing; • the power to discipline land valuers; • the power to set maximum remuneration received by valuers.	
Law Reporting Act 1981	J	The requirement to obtain prior written consent of the Attorney General before publishing judicial decisions of State courts. The practice of selective invitation and awarding of a single contract for a ten year period for the publication of the Authorised Reports. 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	Review completed in 1998. Review found the benefits of the restriction (through maintaining the integrity of judicial processes utilising published judgments) outweigh the costs associated with potentially reduced innovation and availability of law reports. Review concluded the net public benefit could be achieved by a less restrictive alternative,	The Government endorsed the review recommendations. The recommendations are likely to be effected through administrative rather than legislative means.

		judgments and which is not subject to any form of market testing.	involving a negative licensing system giving blanket authorisation to anyone to publish law reports while preserving the Attorney General's right to revoke, vary or withdraw authorisation, and the practice of selective invitation and awarding of a 10 year contract for publication of the Authorised Reports be replaced with a widened tender process and reducing contract periods to 5 years. Also recommended retaining the arrangement between the Supreme Court Library and the Attorney General, as there were benefits from greater accessibility to unreported judgments for the judiciary and the community at large through an efficient distribution service at minimal cost.	
Legal Aid Commission Act 1976 and Regulations	J	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 WA (Inc); • prescribed qualifications of public assessor; and • prescribed rate of interest payable on money owed to Legal Aid Commission.	Review completed. Review found that each of the restrictions is in the public interest and should be retained.	Act retained without reform. The Government endorsed the review conclusion that the restrictions in the Act, as it will be amended by the Bill, should be retained as being in the public interest.
Legal Practitioners Act 1893 and Rules	J	Licensing, registration, entry requirements, reservation of title, reservation of practice, disciplinary processes, business conduct	Review completed in June 2002. Issues paper released in June 2000. Review	The Government introduced advertising restrictions similar to those in Queensland through

		(including monopoly professional indemnity insurance, trust accounts, fees, advertising).	recommended reserving sore areas of legal work; allowing practitioners who have made suitable alternative arrangements to opt out of the Law Society's professional indemnity insurance scheme; and removing restrictions on incorporated practices and multidisciplinary practices.	the Civil Liability Act 2002. The Legal Practices Act 2003 was assented to on 4 December 2003, and proclaimed on December 2003. The Act clarifies the standards required of, and regulation of, legal practitioners; modernises the structure and function of the Legal Practice Board, the complaints committee and disciplinary tribunal; enables the creation of incorporated legal practices and multidisciplinary partnerships; and introduces national practising certificates into WA. Further reforms may be introduced following the outcome of the national model laws project. Reform complete.
Licensed Surveyors Act 1909 and Regulations	PI	Licensing, entry requirements (competency - education and experience, age, good fame and character, continuing professional development), the reservation of title and practice, disciplinary processes, and business conduct (including professional indemnity insurance).	Review, in conjunction with the Strata Titles Act 1985, completed in November 1998. Review recommendations included re-composing the board, clarifying entry standards, and retaining restrictions on professional indemnity insurance. The Government endorsed the review recommendations.	Amendments to the Act were progressed via the Acts Amendment and Repeal (Competition Policy) Act 2003, which gained assent on 15 December 2003. and was proclaimed on 20 April 2004. Reform complete.
Lights (Navigation Protection) Act 1938	PI	Licensing.		Act to be repealed by the Maritime Bill and the Maritime and Transport Legislation Amendment and Repeal Bill, to be drafted.

Liquor Licensing Act 1988 and Regulations	DRGL	Contains a public needs test. (s 38 requires the licensing authorities to have regard to the number and condition and distribution and services provided by existing licensed premises in the affected area.) Also, differential hours for hotels and liquor stores with the latter prohibited from opening on Sundays.	Draft review completed in March 2001. Review recommended that the public needs test should be replaced by a public interest test. This public interest criteria should include reference to the likely effect on competition in the liquor market but not on individual competitors to enable identification of important but otherwise undisclosed public interest matters, i.e. outlet density and propensity for harm and ill health. Review also recommended that trading hours for liquor stores and hotels be similar including on Sundays.	WA introduced a package of measures (to take effect from 1 July 2005) to implement the major review recommendations, replacing the public needs test with a public interest test and allowing the same opening hours for outlets engaged in similar activities. The Liquor Licensing Act Amendment Bill 2003 received approval to draft. However, in response to a clear indication that such a reform package would not successfully pass though the Legislative Council of the Western Australian Parliament, the package of reforms has been withdrawn. A new review is being established with new terms of reference, which is being developed in consultation with major industry stakeholders.
Local Government (Miscellaneous Provisions) Act 1960 *Building Regulations 1989*	LGRD		Review completed in mid 2002. In addition, Government agreed in April 2004 to remove Part 20 of the Act, containing the local government provisions, from the review table as they contain no restrictions on competition. The remaining provisions of the Act require review, or replacement with new	New legislation is being drafted to replace the *Local Government (Miscellaneous Provisions) Act 1960* and the Building Regulations 1989. The new legislation will establish building regulations and specify building approval procedures. However, the drafting of the Building Act is delayed until the Productivity Commission reports on the effectiveness of

			legislation.	the Building Code of Australia.
Local Government Act 1995	LGRD	Competitive neutrality, differential treatment, and single industry superannuation scheme for employees.	Review completed. Review concluded that requirement for local governments to participate in a single industry superannuation scheme is inappropriate. Exemption of Cooperative Bulk Handling from rates found to be potentially anti-competitive. Matter to be considered in conjunction with the review of the Bulk Handling Act 1967.	The Government is currently developing a Bill to implement the review recommendations.
Local Government Draft Model By-Laws	LGRD		Removed from the LRP.	No further action required.
Lotteries Commission Act 1990	DRGL	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.	Review completed in 1997. Review recommended retention of restrictions.	The Government is considering its response to the review recommendations.
Marine (Hire and Drive Vessels) Regulations 1983	PI			Act to be repealed by the Maritime Bill and the Maritime and Transport Legislation Amendment and Repeal Bill, to be drafted.

Marine Act 1982	PI			Act to be repealed by the Maritime Bill and the Maritime and Transport Legislation Amendment and Repeal Bill, to be drafted.
Marine and Harbours Act 1981 and Regulations	PI	Competitive neutrality.	Review completed in 1999.	Act to be repealed by the Maritime Bill and the Maritime and Transport Legislation Amendment and Repeal Bill, to be drafted.
Marketing of Eggs Act 1945	A	Licenses producers. Limits production via quotas. Vests ownership of eggs in the egg marketing board.	Departmental review completed. In August 2003, the Government endorsed the removal of competitive restrictions on the supply and marketing of eggs by July 2007.	A Transitional Advisory Committee has been established and is preparing a plan to deregulate the industry by 2007.
Marketing of Meat Act 1946 and Regulations	A		Review not required.	Act repealed in mid-1999. Reform complete.
Marketing of Potatoes Act 1946 and Regulations	A	Prohibits sale for domestic consumption of potatoes to persons other than the WA Potato Marketing Corporation unless under certain exemptions. Producers must hold growing area licences allocated by the corporation.	Reviewed by the Department of Agriculture. The review recommended the Government maintain the current regulated supply system given the lack of evidence that any major changes would result in improvement in the public interest.	On 5 August 2003, the Minister for Agriculture announced that the State Government would retain the marketing powers of the Potato Marketing Corporation. An implementation advisory group has been formed to investigate possible improvements to the operation of the Act. The Minister will table the group's report in Parliament by 30 June 2004.
Meat Transport Regulations 1969	DH		Review completed.	Regulations were repealed by Regulation 28 of the Health (Meat Hygiene) Regulations 2001.
Medical Act 1894	DH	Entry, registration, title, practice, discipline,	A Ministerial working party	Cabinet approved drafting of a

		advertising.	released a draft report October 1999. Final report released in 2001 and recommended: retaining registration and title protection; changing the disciplinary system; removing prescriptive controls on advertising; further considering issues relating to the regulation of bodies corporate; and linking registration with a requirement for ongoing professional development. Cabinet accepted the review recommendations.	Medical Practitioners Registration Bill, which will replace the current Act.
Mental Health (Administration) Regulations 1965	DH	Licensing.		Regulations repealed and replaced. Replacement legislation to be reviewed.
Mental Health (Consequential) Provisions Act 1996	DH	Licensing.	Review concluded that restrictions are in the public interest and should be retained.	The Government endorsed the review recommendations. Reform complete.
Mental Health (Transitional) Regulations 1997	DH		Review concluded that restrictions contained in the replacement legislation were in the public interest.	The Government endorsed the review recommendations. Reform complete.
Mental Health (Treatment Fees) Regulations 1992	DH	Licensing.	Review completed.	Repealed. Reform complete.
Mental Health Act 1962	DH	Licensing, and differential treatment.	Review concluded that restriction contained in the replacement legislation were in the public interest.	Act repealed and replaced by the Mental Health Act 1996. Reform complete.
Mental Health Act 1996	DH	Licensing, and differential treatment.	Review completed in December 2000. Review found that the restrictions safeguard the welfare of patients with mental illnesses, comply with international obligations and	The Government endorsed the review recommendations. Reform complete.

			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.	
Mental Health Regulations 1997	DH	Licensing.	Review concluded restrictions are in the public interest.	The Government endorsed the review recommendations. Reform complete.
Metropolitan (Perth) Passenger Transport Trust Act 1957 and Regulations	PI		The Trust is to be abolished and replaced by the new WA Public Transport Authority. The Public Transport Authority Act 2003 gained assent on 26 May 2003.	The Metropolitan (Perth) Passenger Transport Trust Act 1957 and Regulations were repealed on 1 July 2003.
Metropolitan Region Town Planning Scheme Act 1959	PI	Controls on land use, via town planning schemes.	The current Government re-activated the consolidation of the planning legislation with the release of a position paper in April 2002.	The Government received submissions on the position paper and is developing the Planning and Development Bill 2004.
Mining Act 1978 and Mining Regulations 1981	DOIR	Prohibits mineral exploration or extraction without a licence. Term of exploration licences - 5 years. Term of extraction (mining) licences - 21 years (renewable). Minimum expenditure conditions.	Departmental review completed. Review recommended retention of all restrictions.	The Government endorsed the recommendations in December 2000. Act retained without reform. Reform complete.
Morley Shopping Centre Redevelopment Agreement Act 1992	DOIR	Government assistance for retail development.	Review completed. Review found that the agreement was in the public interest.	The Government accepted review findings. Act retained without reform. Reform complete.
Motor Vehicle (Third Party Insurance) Act 1943	IC	Mandatory insurance, monopoly insurer, and centralised premium setting.	Review completed in 2000. Review found mandatory insurance and price restrictions give rise to net public benefits (ensuring injured parties are compensated, reducing costly private legal action, lowering transactions costs, lowering	Amending legislation was withdrawn in 2001 and the Government has since taken no further action. It is still considering the 2000 review.

			costs of insurance, increasing the proportion of claims' payments retained by claimants). No less restrictive means of achieving the objectives were found. The review found that monopoly provisions do not offer sufficient public benefit to justify their retention, and recommended the restrictions should be removed.	
Motor Vehicle Dealers Act 1973 and Regulations	CEP	Licensing (motor vehicle dealers, yard managers, car market operators and sales persons), entry requirements (dealers must be solvent and understand their obligations under the Act, yard managers must complete a four-day course), business conduct (statutory warranties on used vehicles), and power to the Motor Vehicle Licensing Board to set standards for premises.	Review completed in 1997. Review recommended: retaining restrictions on licensing for motor vehicle dealers and yard managers; retaining statutory warranties for used vehicles; repealing restrictions on licensing for car market operators and salespersons; and repealing the power of the Motor Vehicle Licensing Board to set standards for premises.	The Government endorsed the review recommendations. Amending legislation passed in May 2002. Reform complete.
Motor Vehicle Drivers Instructors Act 1963	PI	Licensing, entry requirements (competency, aged at least 21 years, good character, fit and proper person, may require test or course), the reservation of practice (teach for reward), and business conduct (dual control vehicle, regulations may make provisions for displaying identification).	Completion of the review was delayed to allow the peak industry more time to make a submission. The review recommended the following amendments: • the definition of "driving instructor" pursuant to the Act be amended to exclude persons who provide advice, instructions or demonstration in driving as an ancillary function in the course of their	Amendments will be included in the Motor Vehicle Driving Instructors Amendment Bill, which will shortly be drafted.

			principal employment, which is not the provision of driving instruction; • applicants for a driving instructor's licence be required to provide a National Police Clearance Certificate obtained no more than six months prior to the time the application is made, while applicants for licence renewal be required to provide an equivalent certificate every two years; • that Regulation 10 be amended to require the fitting of duplicate controls and rear view mirrors to every vehicle "utilised" by a driving instructor for the purposes of instruction, unless exempted; • that it be made compulsory for a driving instructor to attain a relevant qualification as a means of demonstrating competency in providing driving instruction; and • to enable monitoring of compliance with the Act, licensed driving instructors be required to	

			keep and produce prescribed records including the names and addresses of learner drivers instructed, and the dates and times of instruction, and the Director General be empowered to undertake inspections, make enquiries, enter premises, and accompany a driving instructor during the provision of instruction. Cabinet accepted the recommendations on 27 October 2003, except for the recommendation to require duplicate driving controls on every vehicle "utilised" by a driving instructor (which means that duplicate controls will continue to be required only by instructors that provide their own vehicles).	
Murdoch University Act 1973	ES	Competitive neutrality, and market power.	Review by officials completed in 1998. Review recommended that investment provisions be consistent between universities. Government endorsed review recommendations.	Amendments required.
Mutual Recognition (Western Australia) Act 1995	PC		National review completed in July 1998.	
North West Gas Development (Woodside) Agreement Act 1979	DOIR		Review not required.	Act repealed and replaced by the North West Gas Development (Woodside) Agreement Amendment Act 1994.

North West Gas Development (Woodside) Agreement Amendment Act 1994	DOIR	Differential treatment.	Review completed in 1998.	Act retained without reform in view of sovereign risk implications of unilateral amendment or repeal.
Northern Developments (Ord River) Pty Ltd Agreement Act 1960	PI	Differential treatment.	Review not required.	Legislation has been repealed in the Statutes (Repeals and Minor Amendments) Bill 2001, which was assented to on 15 December 2003.
Northern Developments Pty Ltd Agreement Act 1957	PI	Differential treatment.	Review not required.	Legislation has been repealed in the Statutes (Repeals and Minor Amendments) Bill 2001, which was assented to on 15 December 2003.
Northern Developments Pty Ltd Agreement Act 1969	PI	Differential treatment.	Review not required.	Legislation has been repealed in the Statutes (Repeals and Minor Amendments) Bill 2001, which was assented to on 15 December 2003.
Nurses Act 1992	DH	Restrictions on entry, registration, title, practice, and disciplinary provisions.	Review of health practitioner legislation completed. Issues paper released October 1998, and Key Directions paper released June 2001. It proposed removing prescriptive advertising restrictions; requiring practitioners to hold professional indemnity insurance; removing restrictions on business ownership; and retaining broad practice restrictions for three years pending the outcome of the core practices review (which is underway). Core practices discussion paper was released in March 2003.	Review of health practitioner legislation completed. Issues paper released October 1998, and Key Directions paper released June 2001. It proposed removing prescriptive advertising restrictions; requiring practitioners to hold professional indemnity insurance; removing restrictions on business ownership; and retaining broad practice restrictions for three years pending the outcome of the core practices review (which is underway). Core practices discussion paper was released in March 2003.The Nurses Amendment Act 2003,provided for registration

				of nurse practitioners. A review of the proposed legislation was completed prior to introduction.
Occupational Therapists Registration Act 1980	DH	Restrictions on entry, registration, title, practice, and disciplinary provisions.	Review of health practitioner legislation under way. Issues paper released in October 1998, and Key Directions paper released in June 2001. The latter paper indicated that the Government would maintain title protection for occupational therapists. The Government is reconsidering this issue in the core practices review.	In April 2001, the Government approved the drafting of new template health practitioner Acts to replace the health professions legislation. The legislation will be introduced into Parliament as soon as possible.
Offensive Trades (Fees) Regulations 1976	DH	Licensing.	Review under way, as part of the review of the Health Act 1911	Review incomplete.
Optical Dispensers Act 1966	DH	Licensing.	Review of health practitioner legislation recommended a separate Review of optical dispensers. That Review was chaired by Professor Bryant Stokes and provided to the Government in April 2003. In April 2004, Government endorsed the recommendations of the review of the Optical Dispensers Act, to repeal the Act.	Act to be repealed.
Optometrists Act 1940	DH	Restrictions on entry, registration, title, practice, advertising, and disciplinary provisions.	Review of health practitioner legislation under way. Issues paper released in October 1998, and Key Directions paper released in June 2001. It proposed removing prescriptive advertising restrictions; requiring practitioners to hold professional indemnity insurance; removing	In April 2001, the Government approved the drafting of template health practitioner Acts to replace the health professions legislation. The legislation will be introduced into Parliament as soon as possible.

			restrictions on business ownership; and retaining broad practice restrictions for three years pending the outcome of the core practices review (which is under way). Core practices discussion paper released in March 2003.	
Osteopaths Act 1997	DH	Restrictions on entry, registration, title, and disciplinary provisions.	Review of health practitioner legislation under way. Issues paper released in October 1998, and Key Directions paper released in June 2001. It proposed removing prescriptive advertising restrictions; requiring practitioners to hold professional indemnity insurance; removing restrictions on business ownership; and retaining broad practice restrictions for three years pending the outcome of the core practices review (which is under way). Core practices discussion paper released in March 2003.	In April 2001, the Government approved the drafting of template health practitioner Acts to replace the health professions legislation. The legislation will be introduced into Parliament as soon as possible.
Painters Registration Act 1961	CEP	Licensing and registration (for persons carrying on a painting business in their own right and not as employees and for painting valued greater than $200), entry requirements (degree/apprenticeship/ experience and exams, age, good character), the reservation of title and practice, disciplinary processes, and business licensing.	Review completed in 1998. Review concluded that the current system of mandatory licensing is too restrictive and should be removed. The review recommended a certification scheme be developed to allow consumers to readily identify painters who possess particular skills. It also recommended negative licensing to support a certification system, allowing for the removal from the industry of persons who do not adhere to basic standards of	Legislative amendment required.

			commercial conduct. The Government endorsed the original review recommendations. The original review was, however, overtaken by the Gunning Inquiry. This inquiry was commissioned on 3 April 2000 to conduct a Special Inquiry under the Public Sector Management Act 1994 into the operations of the Boards and Committees in the Fair Trading portfolio. The Government endorsed the review recommendations on 20 October 2003: • the definition of 'painting' be amended to specifically exclude mural and streetscape painting from the regulatory regime; • removing the Board's power to regulate 'do-it-yourself' painting; • allowing for differential registration requirements so that the full requirements of licensing would not apply to specific market segments – such as fence painting; • allowing Ministerial exemption of specific market segments where registration is not in the public interest; • increasing the monetary threshold for painting work which would require the use	

			of a licensed painter; • reducing the age at which a person may be registered from 21 to 18; and • providing for the automatic registration of persons who have completed a painting apprenticeship without the need for those persons to undertake further examinations.	
Pathology Centre Notice and Directions 1995	DH	Market power: the PathCentre Directions 1995 restricts Sir Charles Gairdner Hospital from conducting a pathology service.	Review of the Agencies (PathCentre) Notice 1995 completed. Review found that the Notice does not restrict competition. This legislation was reviewed in the context of the Hospitals and Health Services Amendment Act 1996.	
Pawnbrokers and Second-hand Dealers Act 1994 and Regulations	P	Licensing (pawnbrokers, second-hand dealers for not exempt goods), registration, entry requirements (good character, fit and proper person - that is, adequate management, supervision and control of business operations, and no conviction of dishonesty, fraud, or stealing offence in past five years), the reservation of practice, disciplinary processes, and business conduct (pawnbrokers: prescribed records, computer records, notification of pawner of surplus of proceeds of sale; second-hand dealers: prescribed records, holding of goods for prescribed period, requirement that seller provide identification, cooperation with police).	Review by WA Police Service completed in 1999. Consultation involved when developing legislation. No public consultation during review. Review recommended: retaining the current licensing provisions on the understanding that they may be modified following future review; conducting a further review after the current legislation had been in operation for an additional three years; and examining alternative approaches, including those likely to be introduced in other States. Second review undertaken. The Government endorsed both	An amendment Bill has been prepared.

			reviews' recommendations.	
Pearling Act 1990 and Regulations	F	Licensing of pearling and hatcheries. Minimum quota holding for pearling licences. Requirement that hatchery licensees must also hold pearling licence. Wildstock quota. Hatchery quota. Hatchery sales to other than Australian industry prohibited.	Review by the Centre for International Economics (CIE) completed in 1999. Review recommended: • removing minimum pearling quota holdings; • decoupling pearl farming licences from pearl fishing licences; • auctioning temporary increases in wildstock quotas; • removing hatchery quotas without delay; • codifying in regulation criteria for fishery management decisions; and • establishing an independent review tribunal. The Government announced that it has accepted all recommendations but the auctioning of temporary increases in wildstock quota and the removal of hatchery quota. The latter is in place until at least December 2005 pending a further review (underway).	A new Pearling Act is being developed for introduction in the Autumn 2005 Parliamentary sitting. It will incorporate many recommendations from the NCP Review of the Pearling Act and related legislation. A new hatchery quota policy will be developed over the next 1-2 years, noting the current policy expires in December 2005.
Perth Market Act 1926 and Regulations	A	Licensing, and differential treatment.	Review completed in 2002. Consultation involved public advertisement and calling for submissions in June 2000. In May 2002 the Government	Amended by the Acts Amendment and Repeal (Competition Policy) Act 2003, which gained assent on 15 December 2003.

			endorsed the review recommendations to remove the wholesale market monopoly and remove restrictive trading conditions.	The Act was proclaimed on 20 April 2004.
Perth Parking Management Act 1999	PI	Licensing, and differential treatment.	Reviewed as new legislation. New Act 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. Government approved on 18 May 1998.	Assented to on 19 May 1999.
Perth Theatre Trust Act 1979	PTT	Competitive neutrality.	Review completed in 2002. Inter-agency consultation.	In May 2002 the Government endorsed the review recommendation that the State tax and stamp duty exemptions provided to the Perth Theatre Trust are in the public interest and should be retained. The exemption from rates and taxes is considered to have a minimal impact on competition. For many of the performing art forms, which the Trust venues host, there is no competition between venues because of the technical requirements of the performance space. Reform complete.
Petroleum (Submerged Lands) Act 1982 and Regulations	DOIR	Regulates exploration for and development of undersea petroleum resources. This legislation forms part of a national scheme.	National review completed in 1999/2000. Endorsed by the Australian and New Zealand Minerals and Energy Council (ANZMEC) Ministers.	The Government is awaiting the introduction of amendments by the Australian Government before amending its own legislation.

Petroleum Act 1967	DOIR	Regulates onshore exploration for and development of petroleum reserves.	Review to be conducted after outcome of Petroleum and Submerged Land Act legislation is finalised.	The Government is awaiting the introduction of amendments by the Australian Government before amending its own legislation.
Petroleum Legislation Amendment Act 2001	DOIR	Requirement that retailers fix their prices for at least 24 hours and notify these prices for publication on its FuelWatch web site; maximum wholesale price arrangements; the right of a retailer to purchase 50 per cent of petroleum products from a supplier other than the primary supplier; mandatory price boards to be displayed in all regional centres	Review of this Act and the Petroleum Legislation Amendment Act 2001 was completed in 2001. Restrictions were found to be in the public interest. The Australian Competition and Consumer Commission (ACCC) reports found, however, that the restrictions might have reduced competition, increased the rural/urban price differential and raised prices.	
Petroleum Pipelines Act 1969 and Regulations	DOIR	Regulates construction and operation of petroleum pipelines in WA.	Review completed. Common carrier provisions to be considered following PSLA review.	Minor amendments to follow.
Petroleum Products Pricing Amendment Act 2000	CEP	Requirement that retailers fix their prices for at least 24 hours and notify these prices for publication on its FuelWatch web site; maximum wholesale price arrangements; the right of a retailer to purchase 50 per cent of petroleum products from a supplier other than the primary supplier; mandatory price boards to be displayed in all regional centres	Review, in conjunction with the Petroleum Legislation Amendment Act 2001, completed in 2001. Restrictions were found to be in the public interest.	
Petroleum Products Subsidy Act 1965 and Regulations	DOIR	Market power.	Review under way.	
Pharmacy Act 1964	DH	Restrictions on entry, registration, title, practice, advertising, business, ownership, licensing, residence, and disciplinary provisions.	National Review of Pharmacy Regulation (Wilkinson Review) completed in February 2000. The review recommended retaining registration, the protection of title, practice	Review incomplete.

			restrictions and disciplinary systems (although with minor changes to the registration systems recommended for individual jurisdictions). Further, the review recommended maintaining existing ownership restrictions, and removing business licensing restrictions. CoAG referred the national review to a senior officials working group, which recommended that CoAG accept most of the national review recommendations (except the recommendation on nonpharmacy ownership of pharmacies by friendly societies and other nonpharmacists that currently own pharmacies). Stakeholders have provided comments on the recommendations from the national review and the review will shortly be considered by Cabinet.	
Physiotherapists Act 1950	DH	Restrictions on entry, registration, title, practice, and disciplinary provisions.	Review of health practitioner legislation under way. Issues paper released in October 1998, and Key Directions paper released in June 2001. This paper sets out the policy framework that is the basis for proposed new template health practitioner Acts. The Key Directions paper proposed removing prescriptive advertising restrictions; requiring practitioners to hold	In April 2001, the Government approved the drafting of new template health practitioner Acts to replace the health professionals legislation. The legislation will be introduced into Parliament as soon as possible.

			professional indemnity insurance; removing restrictions on business ownership; and retaining broad practice restrictions for three years pending the outcome of the core practices review (which is under way). Core practices discussion paper released in March 2003.	
Pig Industry Compensation Act 1942	A	Ministerial discretion over allocation of funds raised compulsorily for scientific research. Minister may levy growers to fund services to the pig industry including compensation and disease control programs.	Review by Department of Agriculture completed in 1997. Review recommended: • changes to ensure that funds from compulsory levies are used only for services of a public good nature; and • retaining the power of the Minister to levy growers.	The Pig, Potato and Poultry Industries (Compensation Legislation) Repeal Bill 2003 had its second reading in the Legislative Assembly on 20 November 2003.
Piggeries Regulations 1952	DH		Review under way, as part of the review of the Health Act 1911.	Review incomplete.
Planning legislation *Town Planning and Development Act 1928* *Western Australian Planning Commission Act 1985* *Metropolitan Region Town Planning Scheme Act 1959*	PI	Controls land use via town planning schemes.	Review under way. Legislation (Town Planning and Development Act 1928, WA Planning Commission Act 1985, Metropolitan Region Town Planning Scheme Act 1959) consolidated into the Urban and Regional Planning Bill under the previous government The current Government re-activated the consolidation of the planning legislation with the release of a position paper in April 2002. The Government received	New legislation to be drafted.

			submissions on the position paper and is developing the Planning and Development Bill 2004.	
Plant Pests and Diseases (Eradication) Fund Act 1996 [previously the Skeleton Weed and Resistant Grain Insects (Eradication Funds) Act 1974]	A	Power of Minister to impose levies and Ministerial discretion over application of funds.	Review by officials completed in 1997. Review recommended amending the Act to ensure that levies fund only services that are of a sufficiently public good nature and that have been assessed as in accordance with a benefit cost methodology.	The existing Act will be repealed and replaced by the Grain and Seed Crops (Pest Control Funding) Bill, currently being drafted.
Podiatrists Registration Act 1984	DH	Entry, registration, title, practice, discipline.	Review of health practitioner legislation under way. Issues paper released in October 1998, and Key Directions paper released in June 2001. This paper sets out the policy framework that is the basis for proposed new template health practitioner Acts. The Key Directions paper proposed removing prescriptive advertising restrictions; requiring practitioners to hold professional indemnity insurance; removing restrictions on business ownership; and retaining broad practice restrictions for three years pending the outcome of the core practices review (which is under way).	In April 2001, the Government approved the drafting of new template health practitioner Acts to replace the health professionals legislation.
Poisons Act 1964	DH	Licensing.	Part of Galbally Review. Draft review report released on 11 September 2000. Final review report given to the AHMC in early 2001. It found a net benefit from regulating drugs, poisons and controlled	WA amended its regulations to remove or alter some unnecessarily restrictive provisions and to implement the review recommendations on record keeping requirements. A Discussion

			substances, but also found that controls could be reduced in some areas, efficiency improved, and nonlegislative policy responses used in some areas. The AHMC referred the review report to the AHMAC to develop a draft response, in consultation with the Primary Industries Ministerial Council. AHMAC established a Working Party to develop a draft response for CoAG consideration. The working party's draft response, which has been endorsed by AHMAC, was considered by the Primary Industries Ministerial Council before being forwarded to CoAG. The response is expected to be sent to CoAG in spring 2003.	Paper outlining amendments to the Poisons Act required to implement Galbally review was circulated in January 2001. A further Discussion Paper is to be circulated in early 2004. Reform incomplete due to national processes.
Police Force Canteen Regulations 1988	P	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.	Review completed in 1998. Review concluded the effect of the restriction is to enable the Canteen more flexibility in its operations than would be afforded to a private sector operator. Recommended that as the restrictions have a minimal impact and cannot be justified in the public interest, and thus the report concluded 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	The Government endorsed the review recommendations. Minor amendments to the Act are necessary. Regulations were repealed on 3 July 2001.

			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.	
Port Authorities Act 1998	PI	Imposes accountability and ownership requirements, together with safety and public interest controls. Restrictions include exemptions from planning and building requirements; public sector management provisions; accountability provisions; requirements for Ministerial approval; consultation and borrowing limits provisions; pilotage provisions; licensing provisions.	Review completed in 1997. Review concluded that the objectives of the legislation could not be achieved by means other than through the licensing restrictions. Act repeals individual port Acts.	New Act following review of ports instruments assented to on 29 June 1999.
Port Hedland Port Authority Act 1970 and Regulations	PI	Restrictions on market entry and conduct.		Act repealed and replaced by the generic Port Authorities Act 1998.
Port Kennedy Development Agreement Act 1992	PI	Competitive neutrality.	Review completed. Review recommended retention of the Act without change	The Government approved the review recommendations in August 2000.
Ports (Model Pilotage) Regulations 1994	PI	Restrictions on market entry and conduct.		Act repealed and replaced by the generic Port Authorities Act 1998.
Ports Functions Act 1993	PI	Restrictions on market conduct.	Review not required.	Act repealed and replaced by the generic Port Authorities Act 1998.
Potato Growing Industry Trust Fund Act 1947	A	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.	Review by officials completed. It recommended retaining the restriction. The Government approved the review recommendations.	Reform complete. Nevertheless the Act will be repealed via the Pig, Potato and Poultry Industries (Compensation Legislation) Repeal Bill 2003. The Bill received its second reading in the Legislative Assembly on 20 November 2003. The disease control and

				compensation schemes will be established under the Agricultural Produce Commission Act 1988.
Poultry Industry (Trust Fund) Act 1948	A	Power of the Poultry Industry Trust Fund Committee to impose levies. Financial assistance from the Trust Fund to the Poultry Farmers Association.	Review by officials completed in 1997. Review recommended: • amending the legislation to ensure that levies fund only services that are of a sufficiently public good nature and that have been subject to a benefit cost analysis; • replacing the compulsory levy to fund the Poultry Farmers Association with a voluntary levy; and • retaining the levy raising power.	The Pig, Potato and Poultry Industries (Compensation Legislation) Repeal Bill 2003 had its second reading in the Legislative Assembly on 20 November 2003.
Poultry Processing Establishments Regulations 1973	DH			Regulations repealed by Regulation 28 of the Health (Meat Hygiene) Regulations 2001. Reform complete.
Professional Standards Act 1997	J	Provides for limiting liability for persons who are members of prescribed associations.	Departmental review completed in 1998. No public consultation. Review recommended retaining restriction on competition.	The Government endorsed the review recommendations in July 1999. Act retained without reform.
Psychologists Registration Act 1976	DH	Restrictions on entry, registration, title, practice, and disciplinary provisions.	Review of health practitioner legislation under way. Issues paper released in October 1998, and Key Directions paper released in June 2001. This paper sets out the policy framework that is the basis for proposed new template health practitioner Acts. The Key	In April 2001, the Government approved the drafting of new template health practitioner Acts to replace the health professionals legislation. Legislation will be introduced into Parliament as soon as possible.

			Directions paper proposed removing prescriptive advertising restrictions; requiring practitioners to hold professional indemnity insurance; removing restrictions on business ownership; and retaining broad practice restrictions for three years pending the outcome of the core practices review (which is under way). Core practices discussion paper was released in March 2003.	
Public Works Act 1902	HW	Four restrictions all of which are related to competitive neutrality: • financial provisions and powers which potentially allow the WA 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.	Review completed. The review classified restrictions 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 WA, such reform is not considered justified. Recommended retaining the restrictions.	The Government endorsed the review recommendations. Act retained without reform.

Queen Elizabeth II Medical Centre (Delegated Site) By-laws 1986	DH	No restrictions identified.	Review completed.	The Government endorsed the review recommendations. Act retained without reform. Reform complete.
Racing Restrictions Act 1917	DRGL	Licensing, and differential treatment.	Review completed in 1998. Review recommended limiting the authority of the WA Turf Club to thoroughbred racing and providing for licensing of other forms of horse racing where in the public interest. It recommended retaining the centralised control of horse racing and trotting with the industry bodies.	The Racing Restriction Acts 1917 and 1927 were repealed and replaced by the Racing and Gambling Legislation Amendment and Repeal Act 2003, and three related Acts, including the: • Racing and Wagering Western Australia Act 2003; • the Racing Restriction Act 2003; and • the Racing and Wagering Western Australia Tax Act 2003. The Acts gained assent on 26 June 2003. They implement a number of NCP reforms from reviews of the Racing Restriction Acts and the review of the Western Australian Greyhound Racing Authority Act 1981. The Acts establish Racing and Wagering WA as the new governing body for all Western Australian racing. This body has an exclusive licence to conduct off course totalisator betting.
Racing Restrictions Act 1927	DRGL	Prevents the use of 'mechanical devices' in races for other than horses.	Review complete in 1999. Review recommended repeal of the Act.	Act repealed by the Racing and Gambling Legislation Amendment and Repeal Act

				2003, which was assented on 26 June 2003. Reform complete.
Radiation Safety Act 1975 *Radiation Safety (General) Regulations 1983-1999* *Radiation Safety (Transport of Radioactive Substances) Regulations 1980-1999* *Radiation Safety (Qualifications) Regulations 1980-1999*	DH	Licensing.	National review completed. Recommended that advertising restrictions on licencees etc by removed by regulation.	Regulations amended to remove advertising restrictions. Reform complete.
Rates and Charges (Rebates and Deferments) Act 1992	TF	The restrictions identified 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.	Review completed in 1998. Review concluded that 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 deferments 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 deferments 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	The Government endorsed the review recommendations. Act retained without reform.

			public interest. Recommended that all of the restrictive elements of the legislation should be retained on public interest grounds.	
Real Estate and Business Agents Act 1978 and Regulations	CEP	Licensing (agent's licence, sales representative's certificate), registration, entry requirements (aged over 18 years, good character, fit and proper person (including having done prescribed courses, understands duties and obligations under Act), for agent, sufficient material and financial resources), the reservation of practice, disciplinary processes, business conduct (branch office/s require separate manager/s, supervision and control, records, trust accounts, audit, code of conduct, advertising, fidelity fund), and business licensing.	Departmental review completed. It recommended licensing be retained; the board be allowed to recognise qualifications other than those prescribed; legislation include explicit criteria for determining conflict of interest and for deeming who has sufficient material and financial resources; restrictions on who may audit trust accounts be removed; the requirement for board approval of franchise agreements be removed and only one director/partner need be licensed. The Government endorsed the review recommendations in February 2003.	Maximum fees removed in 1998. The required amendments to the Act are being progressed together with amendments to the *Settlement Agents Act 1981.*
Regional Development Commissions Act 1993	LGRD		The Act was removed from the Legislation Review Program in July 2003, as it does not contain restrictions on competition.	No further action required.
Retail Trading Hours Act 1987 and Regulations	CEP	Monday to Saturday trading hours regulated. Sunday trading hours limited and prohibited outside tourism zones. No restrictions above the 26th parallel.	An Industry Reference Group report completed in 1999 and a further review was conducted in 2003 but reports were not released. An Options Paper was prepared, examining the benefits and costs of different trading hours regimes. The paper was	In June 2003, the Government announced that it would not change trading hours until 2005. The Retail Shops and Fair Trading Legislation Amendment Bill 2003 reduces restrictions on metropolitan retail trading, by confirming the current

			released in June 2003.	trading hours regime in the metropolitan and non-metropolitan area, extending weeknight trading to 9:00pm for all general retail stores in the metropolitan area on 2 May 2005, and introducing the Small Business Legislative Protection Package. The Bill has passed the Legislative Assembly and has had its second reading in the Legislative Council on 2 December 2003.
Retirement Villages Act 1992, Regulations and Code of Practice	CEP	Restrictions on the use of retirement village land; compliance with the Code of Fair Practice for Retirement Villages; and marketing and price determination rights	Review completed in 2002. The Retirement Villages Reference Group produced a discussion paper and responses were obtained from retirement village residents and associations. In May 2002 the Government endorsed the review recommendations to amend the following: • restrictions on the use of retirement village land: by making the process for the termination of a village scheme and the removal of a memorial from the whole or a part of the village land simpler and more cost effective; • the Code of Fair Practice for Retirement Villages: by incorporating the existing Code and Act into a single Act; and	Code of Fair Practice for retirement villages reviewed and amended during 2003. Amendments are being prepared.

			• restrictions associated with the marketing and price determination rights of residents: by providing residents with the right to be involved in the marketing of a unit, to receive monthly marketing reports and to have some price determination rights.	
Rottnest Island Authority Act 1987	RIA	• 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.	Review completed in 1998. Review found 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. Review recommended retaining 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	The Government decided to retain all of the restrictions, including the restriction to appoint board members with prescribed knowledge and experience. Reform complete.

			expenditure and application of net profits are to be considered in the Authority's competitive neutrality review.	
Rural Adjustment and Finance Corporation Act 1993	A	Differential treatment.	Review not required.	Act repealed and replaced by the Rural Business Development Corporation Act 2000. Reform complete.
Rural Housing Bill	CHA	• Differential treatment of the Authority compared with similar private sector institutions (Sections 5,11,16,17); and • differential treatment of customers based on location, occupation or type of business (Sections 18-26).	Review completed in 1998. Review classified the restrictions as minor and in the public interest.	Changed name to the Country Housing Act 1997.
Sandalwood Act 1929 and Regulations	CALM	Caps the quantity of naturally occurring sandalwood harvested from Crown and private land. Licenses the harvesting of sandalwood. Individual licences capped at 10 per cent of the total limit.	Review completed. Review recommended removing the cap on harvesting from private land while retaining limits on harvesting on public land.	The Acts Amendment and Repeal (Competition Policy) Act 2003 amended the Act accordingly. The Act was proclaimed on 20 April 2004.
Secret Harbour Management Trust Act 1984	PI	Competitive neutrality.		Repealed by the Statutes (Repeals and Minor Admendments) Bill (No. 2) 1997, which became operational on assent, from 30 April 1998.
Securities Agents Act 1976 and Regulations	J	Licensing.		Act repealed and replaced by the Security and Related Activities (Control) Act 1996.
Security and Related Activities (Control) Act 1996	P	Licensing (security and inquiry activities), registration, entry requirements (training, character, possible medical exam for security officers), the reservation of practice, business conduct (operating restrictions, no advertise unless licensed), and business	Review by WA Police Service completed. Review involved no consultation. Review concluded the security and related industries need statutory control to ensure high standards and to instil public	The Government endorsed the review recommendations in 2000.

		licensing.	confidence, especially in the area of crowd control. Review concluded that the legislation is effective and provides the necessary controls to maintain and improve the industry.	
Seeds Act 1981 and Regulations	A		Review completed.	This legislation will be superseded by the Agriculture Management Bill, scheduled for introduction in 2004.
Settlements Agents Act 1981 and Regulations	CEP	Licensing, entry requirements (qualifications, two years experience, age, good character, fit and proper person, material and financial resources, resident in WA), the reservation of practice, business conduct (supervision, trust accounts, maximum fees, professional indemnity insurance, fidelity fund), and business licensing.	Final report of the legislation review completed in March 2002. Review report found the requirement for settlement agents to be licensed be retained in the public interest because the benefits of reduced risk of financial loss and increased consumer confidence outweighed the costs associated with reduced competition. Review recommended replacing provisions regarding the financial resources of agents with provisions preventing insolvent persons holding a licence, removing the residency requirements, replacing the cap on fees with an offence of 'demanding a fee that is excessive', and giving agents the option of arranging their professional indemnity and fidelity insurance through an insurer of their choice.	Cabinet endorsed the review report in May 2002. The required amendments to the Act are being progressed together with amendments to the Real Estate and Business Agents Act 1978, in a Bill that is currently being developed.
Shipping and Pilotage Act 1967 and Regulations	PI	Governs pilotage services (licensing, competitive neutrality issues).	Review not required.	Act to be repealed by the Maritime Bill.
Small Business Development	SBDC	Differential treatment of businesses.	Review completed. Review found the effects of the	Act retained without reform.

Corporation Act 1983			restrictions on competition to have no practical importance. Government endorsed review findings.	
Small Business Guarantees Act 1984 and Regulations	SBDC	Differential treatment.	Review not required.	The Government approved repeal of the Act in September 2003.
Soil and Land Conservation Act 1945 and Regulations	A	Market power. Soil conservation notices, rates and service charges, clearing controls, and 90 day notice to clear or drain land.	Review completed.	The Government endorsed the review recommendations. Act retained without reform.
South Fremantle Oil Installations Pipeline Act 1948	CMS	Licensing.	Review completed in 1998.	Act retained without reform.
State Employment and Skills Development Authority Act 1990 and Regulations	DET	Licensing.	Review not required.	Legislation repealed and replaced by the Vocational Education and Training Act.
State Superannuation Act 2000	GESB	Limits on choice of fund managers. The Government Employee Superannuation Board (GESB) is the sole fund provider which government employees must use for employer contributions.	Review recommended retaining restrictions on fund choice for public benefit reasons. The Government endorsed the review recommendations in February 2003.	The Government introduced choice of investment type for West State Super members on 1 July 2001. Another review of choice of fund has commenced, but it is limited to financial impacts on the State.
State Supply Commission Act 1985 and Regulations	HW	Differential treatment.	Review completed.	Amendments to this Act were incorporated into the Acts Amendment and Repeal (Competition Policy) Act 2003, which gained assent on 15 December 2003, and was proclaimed on 20 April 2004. Reform complete.
State Trading Concerns Act 1916	TF	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	Review completed in 1998. Review concluded that while the legislation restricts the freedom with which government agencies can enter markets for goods and services it also	The Government endorsed the review recommendations. Act retained without reform.

		department and has been authorised by the Treasurer under the Act to generate revenue from specified activities.	reduces the risk that Government will become involved in inappropriate ventures. Recommended the restriction be retained.	
Statutory Corporations (Liability of Directors) Act 1996	J	Differential treatment of directors.	Review not required. 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 1998 amendments impose similar constraints on directors of statutory corporations as apply to private corporations, and therefore does not give rise to restrictions on competition.	Act retained without reform.
Stipendiary Magistrates Act 1957	J	The Act provides for the appointment of stipendiary magistrates with secure tenure of office and other relative purposes.	Review not required.	Act to be repealed by the Magistrates Court (Consequential Provisions) Bill 2003. The Bill remains in the Legislative Council, having passed through the Legislative Assembly following introduction in December 2003.
Stock (Identification and Movement) Act 1970	A	Branding of human food and fibre producing animals. Documentation required when moving stock.	Review by officials completed. Review found some scope for easing restrictions on horse owners.	This legislation will be superseded by the Agriculture Management Bill, scheduled for introduction in 2004.
Stock Disease (Regulations) Act 1968	A	Restricts importation of stock on grounds of disease control. Requires stockholders to control and notify diseases.	Review by officials completed. Review recommended no change.	Reform complete.
Strata Titles Act 1985 and regulations	LI	Only licensed surveyors can 'certify' a strata plan, survey-strata plan, or notice of resolution where a strata company is requesting a conversion from a strata scheme to a survey-strata scheme.	Review, in conjunction with the Licensed Surveyors Act 1909, completed in 1998. Review concluded restrictions are in the public interest and should be	The Government endorsed review recommendation. Act retained without reform.

			retained.	
Street Collections Regulation Act 1940 and Regulations	CEP	Licensing.	Review not required.	These Acts will be repealed upon enactment of a Public Collections Bill. The Bill is expected to be introduced into Parliament during 2004.
Subiaco Redevelopment Act 1994	PI	• 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.	Review completed in 1997. Review found that effects of the restrictions on competition are relatively minor. The report concluded 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	The Government endorsed the review recommendations. Act retained without reform.

			therefore cannot be removed. Recommended retaining the restrictions on the grounds of public interest.	
Suitors Fund Act 1964	J	Differential treatment of large companies and Crown Agencies.	Review completed in 1997. Review noted that 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. Recommended removing the bar on companies with paid up capital of $200 000 or more.	The Government endorsed the review recommendations. A Cabinet Submission is being prepared by the Department of Justice. This submission will incorporate drafting instructions necessary to give effect to the recommendations arising from the NCP review of the Act. A working party has been established to review this Act in its entirety. The working party is chaired by the Solicitor General. The review is likely to result in new legislation, and the working party discussed the option of putting aside the current NCP review and instead subjecting any new legislation to an NCP review. This approach was used previously with respect to the Magistrates Courts legislation and was approved by Treasury.
Swan River Trust Act 1988 and Regulations	SRT	Licensing. 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.	Review by Water and Rivers Commission completed in January 2000. Review recommended restrictions be retained.	The Government endorsed the review recommendation on 14 August 2000. Act retained without reform.
Taxi Act 1994 and Regulations, and Amendment Regulations 1997	PI	Limitation on number of taxi licences.	Review completed in August 1999 and recommended a buyback scheme similar to that	The Taxi Amendment Bill 2003 was assented to on 15 December 2003 and 48 new

			of the Northern Territoy. Another review was conducted in the Autumn of 2003 and this recommended that the Act be amended in order to allow for the release of additional licences on a lease only basis. The review also recommended that lease rates be set at a level below the rate currently charged by private plate owners and that licences be offered to drivers on a regular basis. The review favoured a voluntary buyback of taxi plates but this was opposed by sections of the industry. There is no prospect of buyback in the immediate future.	taxi licences were offered for lease in January. There were about 200 bidders for the lease licences. Additional licences will be released in the future although as yet, the Government has not announced the details of the licence release mechanism.
Texas Company (Australasia) Limited (Private) Act 1928	HW	The Act defines 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.	Review completed in 1998. Review considered the restrictions do not impose significant costs on the oil companies, or cost advantages or disadvantages on particular oil companies that are of sufficient magnitude to affect competition between the companies. The public benefits of restrictions were assessed to be: minor cost savings in management of municipal infrastructure from coordination in planning, construction and maintenance of municipal infrastructure and oil facilities; minimising public inconvenience during construction and maintenance activities on public land; and ensuring proper	The Government endorsed the review recommendations. Act retained without reform.

			restoration of municipal infrastructure where this has been disturbed due to construction or maintenance activities by the oil companies. It concluded that due to the potential public benefits and the absence of significant costs or effects on competition, 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.	
Tobacco Control Act 1990	DH	Differential treatment, licensing.	Review completed in 2002. In May 2002, the Government endorsed the conclusions of the review that the restrictions on competition in the Act and regulations provide a net public benefit and therefore should be retained. Review found that the restrictions serve to correct significant market failures in the tobacco market and are based on sound public interest grounds. They also apply equally to all participants and do not prevent entry into the already very competitive tobacco market.	The Government endorsed the review recommendations. Reform complete.
Totalisator Agency Board Betting Act 1960 and Rules and Regulations	DRGL	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	Review, in conjunction with the Betting Control Act 1954, completed in 1998. Of the 42 restrictions analysed in the review, the legislative provisions pertaining to 20 restrictions were recommended	The Government retained the prohibition on the licensing of additional off-course totalisators in the Acts that restructure its racing industry.

		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 TAB); and competitive neutrality of the TAB.	for repeal or amendment including: • relaxing restrictions on the operation of totalisators other than by the TAB; • relaxing restrictions on bookmakers and their operations; • removing limits on bets in the regulations, leaving the racing clubs to set limits as they see fit; and • relaxing some restrictions on the operations of the TAB. The legislative provisions giving rise to the remaining restrictions were assessed as being in the public interest and recommended for retention.	
Town Planning and Development Act 1928	PI	Controls on land use, via town planning schemes	The previous WA Government developed the Urban and Regional Planning Bill 2000, which consolidated this legislation. The NCP review examined both the proposed and existing legislation, because the Bill was essentially a consolidation of the existing legislation. The review was almost finalised, but the change of Government in November 2001 meant that it was not submitted to Cabinet. The current Government re-activated the consolidation of the planning legislation with the release of a position paper in April 2002. The Government	Following review and analysis of submissions on the Bill, the Government anticipates introducing a consolidated Planning and Development Bill 2004.

			received a number of submissions and is developing a new green Bill, which will be called the Planning and Development Bill 2003. The purpose of the Bill is to elicit submissions on the broad proposals contained in the position paper and a number of fresh proposals.	
Transport Co-ordination Act 1966 and Regulations	PI	Restrictions relate to provisions for the Minister to borrow funds and make payment of subsidies to providers of transport services. Also included are a range of provisions, powers and requirements related to the licensing of vehicles used for commercial purposes and the regulation of transport services provided by these vehicles.	Review completed in 1999. Review recommended: • 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. The Government endorsed the review recommendations in November 2000. Since those recommendations were made however, the effects of 11 September 2001 and the Ansett collapse of 14 September 2001 have had a significant impact on the intrastate air transport market in WA, especially regional WA. This prompted the Government's intrastate air	Review shortly to be considered by Government.

			services review in 2001-02. The Government believes that some measure of air service regulation may be necessary to ensure that proposed and existing charter services do not compromise the viability of scheduled RPT services. The design of such regulations will proceed in open consultation with industry. Following the review of intrastate air services, the Government extended the licence to operate on the network connecting Perth with major coastal towns. It will undertake a further review of the provision of services to these routes from 2005. The Government is also considering changes for other air routes.	

Travel Agents Act 1985 and Regulations	CEP	Licensing and compulsory consumer compensation fund.	Part of national review of travel agent legislation, coordinated by WA. A final review report by CIE released in 2000. Public consultation involved release of issues paper, background paper, consultation and receiving submissions. Review recommended that entry qualifications for travel agents be removed and maintain compulsory insurance, but recommended the requirement for agents to hold membership of the Travel Compensation Fund, the compulsory insurance scheme, be dropped. Instead, a competitive insurance system where private insurers compete with the Travel Compensation Fund was viewed as the best option. In November 2002, the Ministerial Council on Consumer Affairs (MCCA) decided to maintain the Travel Compensation Fund monopoly, but consider establishing a risk-based premium structure and making prudential reporting arrangements more equitable. It recommended that each participating jurisdiction review and amend its entry qualifications to ensure uniformity.	Cabinet endorsed the national review on 23 June 2003. WA has commenced implementation of the proposed reforms but all regulatory amendments will need to be agreed at the national level before being tabled in Parliament.
Trustee Companies Act 1987	J	Competitive neutrality, licensing.	Review completed in 1998. Review recommended retention on limits on borrowings and loans, and lessening of barriers	National uniform legislation is proposed and has 'in principle' support from the Australian Government. States were to contract the Australian

			to entry.	Prudential Regulatory Authority to complete the prudential reviews (as they already do them for insurance and superannuation) but no agreement could be reached. The Attorney General has written to Senator Campbell expressing disappointment with decision and asked that this situation be taken into account regarding the NCP review. Western Australia believes that South Australia (and maybe New South Australia) have written to the Australian Government expressing a similar view.
University Colleges Act 1926	ES	Competitive neutrality, market power.	Review, conducted by the Office of Higher Education, completed 1998. Review concluded that the restrictions are in the public interest given the quality of pastoral care provided to students by university colleges. Government endorsed review findings.	Act retained without reform. Reform complete.
University Medical School Teaching Hospitals Act 1955	DH	Market power.	Review completed. Review did not identify any restrictions on competition.	The Government endorsed the review recommendations. Reform complete.
University of Notre Dame Australia Act 1989	ES	Competitive neutrality, market power.	Review, conducted by the Office of Higher Education, completed in 1998. Review recommended that investment provisions be consistent between universities. Government endorsed review recommendations	Amendment to the Edith Cowan University Act being progressed via the Acts Amendment and Repeal (Competition Policy) Act 2003, which gained assent on 15 December 2003 and was proclaimed on 20 April 2004.
University of Western Australia Act 1911	ES	Competitive neutrality, market power.	Review, conducted by the Office of Higher Education, completed	Amendment to the Edith Cowan University Act being progressed

			in 1998. Recommended that investment provisions be consistent between universities. Government endorsed review recommendations.	via the Acts Amendment and Repeal (Competition Policy) Act 2003, which gained assent on 15 December 2003 and was proclaimed on 20 April 2004.
Valuation of Land Act 1987	DOLI	Valuer-General powers and activities.	Review completed in 1998. Review undertaken by intra-agency committee. Public consultation involved submissions following release of an information paper. Recommended less narrowly defined eligibility for the position of Valuer General (dropping requirement to be a member of the Australian Property Institute), removing restriction that any person making valuation for rating and taxing purposes must be licensed under Land Valuers Licensing Act, and encouraging greater flow of information for the purposes of making valuations. Government endorsed review recommendations.	Recommendations were implemented via the Acts Amendment and Repeal (Competition Policy) Act 2003, which gained assent on 15 December 2003 and was proclaimed on 20 April 2004. Reform complete.
Veterinary Preparations and Animal Feeding Stuffs Act 1976	A	Until mid 1990's, required premises and products to be registered. Restricts packaging and labelling on animal feeding stuffs. Requires analysts to hold minimum qualifications. Restricts advertising.	Review as part of the national review completed in 1999. See the Agriculture and Veterinary Chemicals (Control of Use) Act 1992 (Victoria).	See the Agriculture and Veterinary Chemicals (Control of Use) Act 1992 (Victoria). The Veterinary Preparations and Animal Feeding Stuffs Amendment Bill 2003, which implements the recommendations of the national review regarding consistency in regulation between jurisdictions, is currently in Parliament following introduction on 7 May

				2003.
Veterinary Surgeons Act 1960	A	Licensing of veterinary surgeons and hospitals, reservation of practices, reservation of title, advertising restrictions, and controls on business names.	Review was completed in 2001. Review recommended: • introducing a new registration for lesser qualified practitioners; but • replacing restrictions on advertising, premises and ownership with voluntary codes. • repealing the restrictive aspects of the premises registration provisions, and replacing them with a voluntary code of practice; and • repealing the restrictions on ownership of veterinary practices by non-veterinarians. The Government endorsed the review recommendations	The Act requires amendment and the new codes of practice need to be introduced. Drafting of the amending Bill has not yet commenced.
Video Tape Classification and Control Act 1987	J	Licensing.	Review not required.	Act repealed and replaced by the Censorship Act 1996.
Vocational Education and Training Act 1996	DET	Registers training providers and accredits training courses.	Review, conducted by an independent consultant, completed. Review concluded that public benefits of restrictions outweigh costs. Recommendations endorsed by Government	Act retained without reform.
Water Services Coordination Act 1995 - Part 2 of 2: Water Services Coordination (Plumbers Licensing) Regulations 2000	CEP	Plumbers - licensing, registration, entry requirements (competency or six years experience and qualification, fit and proper, reservation of practice (either licensed or under supervision of licensed), and	Review completed. Review recommended retaining restrictions to prevent unlicensed persons performing plumbing work and maintain the power of the Board to set	The Government endorsed the review recommendations. Act retained without reform.

		disciplinary processes.	licence conditions.	
Weights and Measures Act 1915 and Regulations	CEP			The Act will be repealed upon the enactment of new trade measurement legislation, which is to be based on the national model. Nationally uniform trade measurement legislation will be introduced into Parliament during 2004.
Western Australian Greyhound Racing Authority Act 1981	DRGL	Differential treatment.	Review completed. Review recommended removal from the WA Greyhound Racing Authority Act 1981 of the arbitrary limit on the number of meetings the WA Greyhound Racing Association may conduct. It also recommended that the provisions contained in the 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.	The Government endorsed the review recommendations. Removal of provisions that limit the number of meetings that the WA Greyhound Racing Authority may hold was in the racing legislation that was enacted on 26 June 2003.
Western Australian Land Authority Act 1992	PI	The WA Land Authority's exemption from rates and taxes. The Authority's power to compulsorily acquire land. The requirement to seek pre-approval from the Minister on contracts. Restrictions on the Authority's retail activities in the higher end of the residential land	Review completed in 1997. Review recommended: • 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	The Government endorsed the review recommendations. Amendment Bill passed on 6 July 2000. Reform complete.

		market.	not obliged to pay; • removing the section of the Act allowing the Authority's power to compulsorily acquire land; • amending that legislation to allow contracts to be agreed subject to Ministerial approval; and • exempting surplus public sector land assets and urban renewal projects from the restrictions on the Authority's retail activities in the higher end of the residential land market.	
Western Australian Marine (Hire and Drive Vessels) Regulations 1983	PI	Licensing.	Review not required.	The repeal of the Western Australian Marine (Hire and Drive Vessels) Regulations 1983 and the Western Australian Marine Act 1982 will form part of the Maritime Bill.
Western Australian Marine Act 1982	PI	Licensing.	Review not required.	The repeal of the Western Australian Marine (Hire and Drive Vessels) Regulations 1983 and the Western Australian Marine Act 1982 will form part of the Maritime Bill.
Western Australian Meat Industry Authority Act 1976	A	Controls on abattoir capacity, controls on branding, and regulations of saleyards, abattoirs and processing works.	Review by officials completed in 1998. Review recommended: • removing controls on abattoir capacity and regulation of sale yards; • retaining controls on branding; and • retaining regulation of abattoirs and processing	Amended by the Acts Amendment and Repeal (Competition Policy) Act 2003, which gained assent on 15 December 2003. The Act was proclaimed on 20 April 2004.

			works.	
Western Australian Planning Commission Act 1985	PI	Controls on land use, via town planning schemes	The current Government re-activated the consolidation of the planning legislation with the release of a position paper in April 2002. The Government received submissions on the position paper and is developing the Planning and Development Bill 2004.	Following review and analysis of submissions on the Bill, the Government anticipates introducing a consolidated Planning and Development Bill 2004.
Western Australian Product Symbols Act 1972	HW	The symbols are able to be used by eligible businesses free of charge and may present a slight advantage to WA businesses and products in home markets.	Review completed. Review found that the symbols do not comprise a significant restriction in their own right, but due to their widespread success and recognition, they now influence consumer behaviour in WA. 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. Alternatively, 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. The review noted some important spin-off benefits from the symbols in growing the WA economy and noted their popularity among consumers. Review concluded that, on the balance of probabilities, the	The Government endorsed the review recommendations. Act retained without reform.

			benefits of the current model outweigh its minor costs and that the Act should be retained.	
Western Australian Reproductive Technology Council (Nominating Bodies) Regulations 1992 and Directions	DH			Directions will be amended following amendment to the HRT Act currently before Parliament.
Western Australian Treasury Corporation (Amendment) Bill 1997	TF	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.	Review completed. 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 Australian Government and other government borrowers. Recommended retaining the restriction.	The Government endorsed the review recommendations. Act retained without reform.
Western Australian Treasury Corporation Act 1986	TF	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.	Review completed in 1997. 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 Australian Government and other government borrowers. Recommended retaining the restriction.	The Government endorsed the review recommendations. Act retained without reform.

Wheat Marketing Act 1989	A	Imports Australian Government Act into State jurisdiction.	Review not required.	Act no longer operating and has been repealed by the Acts Amendment and Repeal (Competition Policy) Act 2003, which gained assent on 15 December 2003. The Act was proclaimed on 20 April 2004.
Wild Cattle Nuisance Act 1871	A	Regulates the destruction of wild cattle.	Review by officials completed. Review recommended repealing the Act, as it is redundant.	The Act has been repealed by the Statutes (Repeals and Minor Amendments) Bill 2001, which was assented to on 15 December 2003. Reform complete.
Wildlife Conservation Act 1950	CALM	Restrictions include prohibitions on the taking of protected fauna from all lands and waters unless one has authority to do so under the Act, prohibitions on commercial dealings in protected fauna (including skins and carcasses) and flora unless undertaken in accordance with licensing provisions and regulations, and prohibitions on abandoning or releasing fauna and prescribed animals into the State, or moving those animals out of the State, unless licensed to do so.	Review completed. Review and associated regulations concluded that all of the restrictions on competition identified in this legislation provide a net public benefit, and should be retained. Review identified a range of public benefits that arise as a result of the restrictions, including increased economic activity associated with sustainable wildlife management, enhanced tourism opportunities, enhanced environmental and recreational amenity, and the beneficial contribution of wildlife to the functioning of the ecosystem in general.	No reform required.
Workers' Compensation and Rehabilitation Act 1981	WCRC	Mandatory insurance, licensed insurers, centralised premium setting.	Review report completed early 2002.	WorkCover is progressing minor legislative change.

12 ATTACHMENT 6: WATER LEGISLATION REVIEW DATABASE FOR WESTERN AUSTRALIA

12.1 AGENCY ABBREVIATIONS

The following abbreviations are used in the 'Agency' column of the water legislation review timetable.

DH	Department of Health (Western Australia)
LA	Department of Land Administration (Western Australia)
OWP	Office of Water Policy (Western Australia)
WRC	Water and Rivers Commission (Western Australia)

12.2 WATER LEGISLATION TABLE

Name of legislation	*Agency*	*Major restrictions*	*Review activity*	*Reform activity*
Carnarvon Irrigation District By-laws	WRC	Differential treatment.	Review by the Water and Rivers Commission (WRC) completed in January 2000. Review found minor restrictions to be justified on public welfare grounds to maintain security of supply and safeguard infrastructure.	Cabinet approved the transfer of the irrigation assets and management to local control. The transfer of the management of the business has been undertaken while the asset transfer has been deferred due to a number of native title issues.
Country Areas Water Supply (Clearing Licence) Regulations 1981	OWP	Controls over land clearing.	Review by the Office of Water Regulation (now OWP) completed in August 2000. Review recommended no change. Controls were justified on wider ecological and public interest grounds.	The Government endorsed the review recommendations on 18 December 2000. Act retained without reform.
Country Areas Water Supply Act 1947	OWP	Licensing, and market power by Water Corporation.	Review by the OWP completed in September 1999.	The amendments to the Act will be progressed in a water industry legislation amendment bill. Cabinet approved the re-drafting of the amendments on 9 February 2004.

Country Areas Water Supply By-laws 1957	OWP	Market power.	Review completed.	The Government endorsed the findings of the review in December 1999. The OWP are currently progressing the amendments to the regulations/by-laws.
Country Towns Sewerage Act 1948 and By-laws	OWP	Licensing, registration, entry requirements (competency or six years experience and qualification, fit and proper), the reservation of practice (either licensed or under licensed supervision), and disciplinary processes.	Review of Water Services Coordination Amendment Act 1999 recommended retaining restrictions to prevent unlicensed persons from performing plumbing work, and maintaining the board's power to set licence conditions.	The amendments to the Act will be progressed in a water industry legislation amendment bill. Cabinet approved the re-drafting of the amendments on 9 February 2004. Plumbers' licensing provisions were transferred to the Water Services Coordination (Plumbers Licensing) Regulations in 2000. The transfer also shifted responsibility for plumbers' licensing from Water Corporation to the new Plumbers Licensing Board. By-laws are to be amended.
Harvey, Waroona Collie River Irrigation Districts By-laws 1975	WRC	Monopoly powers to Water Corporation. Differential rights to irrigators.	Review by WRC completed in January 2000. No action proposed — minor restrictions justified on public welfare grounds to maintain security of supply and safeguard laws proposed to reflect current management practices.	The Government endorsed the review recommendations on 14 August 2000.
Health (Treatment of Sewerage and Disposal of Effluent and Liquid Waste) Regulations 1993	DH	Licensing.	Review to be undertaken as part of the review of the Health Act 1997.	To be determined.
Irrigation (Dunham River) Agreement Act 1968	LA	Differential rights.		Legislation has been repealed in the Statutes (Repeals and Minor Amendments) Bill 2001, which was assented to on 15 December 2003.

Land Drainage (Rating Grades) Regulations 1986 Water Agencies (Entry Warrant) Regulations	OWP	Provides an 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. Provides for land to be 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. Provides exemption from charges for pensioners.	Review recommended retaining legislative restrictions finding them to be in the public interest for reasons of social equity and good infrastructure planning. Some 'housekeeping' recommendations include amending the: • grading system in the Land Drainage (Rating Grades) Regulations so that all charges are dealt with through the Water Agencies (Powers) Act 1984; and • Water Agencies (Infringements) Regulations 1994 to ensure they are consistent with the Water Agencies (Powers) Act, which enables the WRC to delegate authority for issuing infringements.	The Government endorsed the review recommendations. The OWP are currently progressing the amendments to the regulations/by-laws.
Land Drainage Act 1925	OWP	Market power.	Review by the OWP completed in 1999. Minor amendments to Act are proposed to ensure consistency with the competitive licensing regime and other related Acts.	The Government endorsed the review recommendations on 20 December 1999. The amendments to the Act will be progressed in a water industry legislation amendment bill. Cabinet approved the re-drafting of the amendments on 9 February 2004.
Land Drainage Bylaws 1986	OWP	Market power.	Review by OWP completed in December 1999.	The Government endorsed the review recommendations on 20 December 1999. The OWP are currently progressing the amendments to the regulations/by-laws.
Land Drainage Regulations 1978	OWP	Market power.	Review by the OWP completed in 1999. Review recommended that all charges be dealt with through the Water Agencies (Powers) Act 1984.	The OWP are currently progressing the amendments to the regulations/by-laws.
Metropolitan Water Authority (Miscellaneous) By-laws 1982	WRC	Differential treatment.	Review by the WRC completed. Review identified no competition restrictions.	The Government endorsed the review recommendations. Act retained without reform.

Metropolitan Water Authority Act 1982	WRC	Provides market power to the Water Corporation.	Review by the WRC completed. Review identified no competition restrictions.	The Government endorsed the review recommendations on 14 August 2000. Act retained without reform.
Metropolitan Water Supply, Sewerage and Drainage Act 1909	OWP	Market power, and differential treatment for licensing.	Review by the OWP completed in September 1999.	The Government endorsed the review recommendations on 20 December 1999. The amendments to the Act will be progressed in a water industry legislation amendment bill. Cabinet approved the re-drafting of the amendments on 9 February 2004.
Metropolitan Water Supply, Sewerage and Drainage By-laws 1981	WRC	Licensing - as for the Country Towns Sewerage Act 1948.	Review by the OWP completed.	Plumbers' licensing provisions were transferred to the Water Services Coordination (Plumbers Licensing) Regulations in 2000. The transfer also shifted responsibility for plumbers' licensing from Water Corporation to the new Plumbers Licensing Board. Further amendments are expected.
Ord Irrigation District By-laws	WRC	Provides market power to Water Corporation. Differential rights to irrigators within the area.	Review by the WRC completed in January 2000. Review recommended no change as the restrictions are minor and justified on public welfare grounds to maintain security of supply and safeguard infrastructure.	The Government endorsed the review recommendations on 14 August 2000. Amendments to By-laws proposed to reflect devolved ownership and control of the scheme.
Preston Valley Irrigation District By-laws	WRC	Differential treatment.	Review by the WRC completed in January 2000. Review recommended retaining the restrictions on competition in the public interest. Amendment to the By-laws to reflect the current management practices and responsibilities of the Water Corporation and grower cooperatives following the devolution of irrigation management.	The Government endorsed the review recommendations on 14 August 2000. The OWP are currently progressing the amendments to the regulations/by-laws.

Rights in Water and Irrigation (Construction and Alteration of Wells) Regulations 1963	WRC	Licensing restrictions. The Waters and Rivers Commission is given sole rights to fit, repair and test water meters.	Review by the WRC completed in January 2000.	The Government endorsed the review recommendations on 14 August 2000. An amendment to the regulations to remove the WRC's exclusive right to the fitting, repair and testing of water meters is being progressed.
Rights in Water and Irrigation Act 1914 and Regulations	WRC	Licensing of rights to take water. Provides monopoly powers to the Water Corporation.	Review by the WRC completed.	The Government endorsed the review recommendation on 20 December 1999. The amendments to the Act will be progressed in a water industry legislation amendment bill. Cabinet approved the re-drafting of the amendments on 9 February 2004.
Water (Dixvale Area and Yanmah Area) Licensing Regulations 1974	WRC	Differential treatment of a small group of irrigators.	Review by the WRC completed in 2000. Review recommended repealing the regulations.	The Government endorsed the review recommendations.
Water Agencies (Charges) Bylaws 1987	OWP	Differential treatment of Crown lands.	Review by the OWP completed in 1999.	The Government endorsed the review recommendations. Retained without reform.
Water Agencies (Entry Warrants) Regulations 1985	OWP		Review by the OWP completed in 1999.	The Government endorsed the review recommendations. Retained without reform.
Water Agencies (Infringements) Regulations 1994	OWP	Market power to Water Corporation.	Review by the OWP completed in 1999. Review recommended minor amendments to ensure consistency of the approach with competitive licensing regime, and related Acts.	The Government endorsed the review recommendation to modify regulation 5 (officers issuing infringements to make it consistent with recommendations from the review of the Water Agencies (Powers) Act 1984). The OWP are currently progressing the amendments to the regulations/by-laws.

Water Agencies (Powers) Act 1984	OWP	Market power to Water Corporation.	Review by the OWP completed in 1999.	The Government endorsed the review recommendations. The amendments to the Act will be progressed in a water industry legislation amendment bill. Cabinet approved the re-drafting of the amendments on 9 February 2004.
Water Agencies Restructure (Transitional and Consequential Provisions) Act 1995	OWP		Review by the OWP completed in 2000. No restrictions on competition were identified.	Act retained without reform.
Water and Rivers Commission Act 1995	WRC	The Act provides powers for natural resource management.	Review by the WRC completed in 2000. No changes recommended.	The Government endorsed the review recommendations in 2000.
Water Boards Act 1904 and By-laws	OWP	Licensing. Restricts powers to supply of water within defined areas.	Review by the OWP completed in 1999.	Amendment to Act will allow the agencies to provide a full suite of water services and freedom to compete for licences on equal terms with the Water Corporation. The revised By-laws were considered under gatekeeper requirements. A separate process is being undertaken by the OWP to amend the legislation.
Water Corporation Act 1995	OWP		Review by the OWP completed in 1999.	Act retained without reform.

Water Services Coordination Act 1995 – Part 1 of 2	OWP	Complex licensing regime inhibits competitive outcomes.	Review by the OWP completed in 1999. Review recommendations include the adoption of a simpler, pro-competitive licensing regime and provide for competitive neutrality in relevant Acts. Five year review under s62 completed in 2003.	The amendments to the Act will be progressed in a water industry legislation amendment bill. Cabinet approved the re-drafting of the amendments on 9 February 2004. Some recommendations have been implemented through the Economic Regulation Authority Act 2003. These are the inclusion of public interest considerations as part of the licensing regime, and the ability to transfer a licence. The ERA Act also provides for regulations prescribing public consultation processes as part of the decision to grant, amend or transfer a licence.
Water Supply, Sewerage and Drainage Act 1912	OWP	Restrictions relate to asset ownership.	Review by the OWP completed in 1998.	Act retained without reform.
Waterways Conservation Act 1976 and Regulations	WRC	Licensing system for disposal of waste in waterways.	Review by the WRC completed in 2000. Review recommended no changes. A major review was proposed to achieve rationalisation of functions and operation between this Act and the Environmental Protection Authority Act.	The Government endorsed the review recommendations in 1999 and the Act was retained without change.