NEW SOUTH WALES GOVERNMENT

Report to the National Competition Council on the Application of National Competition Policy in New South Wales for the year ending December 2000

June 2001

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1 Introduction

1.1 This Report is the New South Wales Government's fifth annual report to the National Competition Council (NCC) on the Government's progress in implementing National Competition Policy (NCP). It covers the implementation of NCP over the 12 months to 31 December 2000.

1.2 The report will be used by the NCC in undertaking its third tranche assessment of the Government's progress in implementing the agreed reforms.

1.3 In April 1995 the Council of Australian Governments (COAG) ratified the NCP. The Policy is aimed at increasing consumer and business choice, improving efficiencies and creating an overall business environment in which to improve Australia's international competitiveness. Three Intergovernmental Agreements constitute the NCP. These Agreements are:

- the *Conduct Code Agreement;*
- the *Competition Principles Agreement;* and
- the *Agreement to Implement National Competition Policy and Related Reforms.*

1.4 The specific components of the National Competition Policy are:

- the extension of the competition provisions of the *Trade Practices Act (Cwth) 1974* to persons in each jurisdiction in the manner specified in the *Conduct Code Agreement*;
- the implementation of principles to facilitate the creation of competitive markets for public sector goods and services in the *Competition Principles Agreement*; and
- the implementation of reforms in the electricity, gas, water and road transport sectors identified in the *Agreement to Implement National Competition Policy and Related Reforms*.

1.5 NCP is of course only one part of the NSW Government's policy aims and its application is intended to sit alongside the Government's other economic, social and environment policy objectives. When applied, competition policy should be able to promote these other policy aims by creating a policy environment in which the costs and benefits of government regulation and service provision are subject to transparent assessment. Exposing public policy to this kind of transparency is essential for the efficient and effective allocation of resources for the benefit of the communities that governments serve.

1.6 Importantly, NCP provides an opportunity for governments to ensure that the principles of competition:

- promote increased consumer choice;
- promote increased business choice and innovation;
- facilitate the efficient allocation of resources in the economy; and
- increase the opportunities for Australian business to effectively compete for international market share.

1.7 The NSW Government is committed to achieving these goals whilst ensuring that:

- competition policy is not implemented as an end in itself;
- all customers continue to have access to goods and services;
- goods and services are equitably distributed; and
- consumers are protected in the choices they make.

1.8 New South Wales is leading the way in implementing many of the reforms needed to make Australia more competitive New South Wales and Australian economy.

Report Structure

1.9 The report has separate chapters addressing NCP reform obligations relevant to particular sectors of the economy. This is consistent with the structure used by the NCC in its publication entitled: *NCP Third Tranche Assessment Framework*, March 2001. Ideally, the report should be read in conjunction with the NCC's Assessment Framework.

1.10 Reporting on priority reviews is dealt with in the industry sector chapters. Line item reporting on non-priority reviews for which NCP review and reform activity has previously been reported to the NCC as incomplete, can be found in Annexure 2.

1.11 In relation to some legislation, the Government has previously reported to the NCC that it has completed its review and reform obligations. In cases where the NCC has not signalled any outstanding issues in relation to these reviews, the Government considers that it has met its NCP obligations. Legislation in this category is listed in Annexure 3. The Government does not propose to report further on these reviews.

2 Application of Competitive Neutrality

2.1 Application of Competitive Neutrality to Significant Government Business Enterprises (GBEs)

Requirements of the Competition Principles Agreement

2.1.1 The principle of competitive neutrality requires that Government Business Enterprises (GBEs) operate without net competitive advantage in relation to other businesses as a result of their public ownership.

2.1.2 The Agreement [in Clauses 3(4) and 3(5)] requires governments to implement competitively neutral arrangements wherever the benefits to be realised from implementation outweigh the costs. Overall it is generally believed that there are net economic and social benefits in implementing competitive neutrality principles. The onus is on the GBE to demonstrate that this is not the case for it to be eligible for exemption from the requirements of the Agreement.

2.1.3 Governments were required to prepare a policy statement on the application of competitive neutrality in their respective jurisdictions by June 1996 and to publish an annual report thereafter.

2.1.4 The Agreement [Clause 3(4)], with respect to significant GBEs classified as Public Trading Enterprises and Public Financial Enterprises by the Australian Bureau of Statistics, requires governments, where appropriate, to:

- adopt a corporatisation model; and
- impose on GBEs full Commonwealth, State and Territory taxes or tax equivalent systems, debt guarantee fees directed towards offsetting the competitive advantages provided by government guarantees, and those regulations to which private sector businesses are normally subject on an equivalent basis to GBEs' private sector competitors.

Application in New South Wales

2.1.5 In New South Wales, GBEs include:

- Public Trading Enterprises (PTEs);
- Public Financial Enterprises (PFEs); and
- Some Non Budget Dependent General Government agencies.

2.1.6 PTEs are businesses that have generally been subject to commercialisation reforms and have implemented measures to improve productive efficiency. Commercialisation reforms involve the adoption of the following measures:

- clear and non-conflicting objectives;
- sufficient management responsibility, authority and autonomy;
- independent, objective monitoring of performance; and
- an effective system of rewards and sanctions.

2.1.7 PFEs are PTEs engaged in financial intermediation and financial auxiliary services as defined by the Australian Bureau of Statistics in *Standard Economic Sector Classifications of Australia (SESCA) 1998.*

2.1.8 Most of these GBEs are subject to the full rigour of the New South Wales Commercial Policy Framework (see later - which is currently under review).

2.1.9 In June 1996, the NSW Government published its *Policy Statement on the Application of Competitive Neutrality*. The Statement made it clear that in New South Wales the onus is on a GBE to implement competitive neutrality principles unless it can show that the economic and social costs of implementation outweigh the economic and social benefits. Accordingly, a benefit–cost analysis, showing a net cost to the community, needs to be completed by GBEs that consider it inappropriate to implement these principles.

2.1.10 The requirements of clause 3(4) are being achieved through the application of the Commercial Policy Framework, including the corporatisation of a large number of 'commercial' sector agencies in New South Wales.

2.1.11 Corporatisation involves all the above 'commercialisation' reforms, and additionally requires the adoption of measures that increase the level of competition in the market the entity is operating in. Corporatisation involves developing appropriate legal, regulatory, institutional and market frameworks for the business and requires that enabling legislation pursuant to the *State Owned Corporations Act 1989*, as amended, be put in place. (SOCs are discussed further in 2.1.14*ff*).

2.1.12 The forthcoming *NSW Government Policy Statement on Competitive Neutrality, 2001* will provide an update to the 1996 Statement in relation to:

- the Commercial Framework applying to NSW Government businesses;

- formalisation of competitive neutrality complaints mechanisms; and

- finalisation of guidelines for the costing and pricing of NSW Government business outputs incorporating an 'avoidable cost' approach to pricing decisions. (This section is related to the forthcoming NSW Treasury Policy and Guidelines Paper: *Guidelines for Pricing of User Charges, 2001*. Accordingly, the two policy documents should be read in conjunction).

2.1.13 The Guidelines for Pricing of User Charges are designed to meet the requirements of clause 5(a) of the Competition Principles Agreement whereby agencies which undertake significant business activities as part of a broader range of functions need to apply Competitive Neutrality (CN) based prices to their business outputs. Significant business units of General Government Agencies are therefore covered and are largely the target of the Guidelines.

State Owned Corporations

2.1.14 The *State Owned Corporations Act (NSW) 1989* (amended in 1995) and the *State Owned Corporations Amendment Act (NSW) 1995* provide a comprehensive framework for the corporatisation of GBEs as proxy public companies called State Owned Corporations (SOCs). Those GBEs that have been and are intended to be subject to corporatisation are listed in **Table 2.1**.

2.1.15 There are two classes of SOC: the company SOC, and the statutory SOC. Both classes of SOC have a Board of Directors, share capital and a memorandum and articles of association like a public company limited by shares. Unlike a public company, however, the shareholders consist of the Treasurer and one other Minister (or potentially two or more Ministers for a company SOC).

2.1.16 Both statutory SOCs and company SOCs are subject to certain Commonwealth statutes. For example, Part IV of the *Trade Practices Act (Cth) 1994* applies to both entities. Company SOCs are subject to the Corporations Law. However, statutory SOCs are only subject to the provisions relating to officers' duties and liabilities.

The principal objectives of every SOC, regardless of class, are to operate:

- efficiently;
- in a way that maximises the net worth of the State's investment;
- in a socially responsible manner;
- in accordance with the principles of ecologically sustainable development; and
- with consideration of regional development.

Each of these objectives should be weighted equally in the SOC's operations.

Commercial Policy Framework

2.1.17 All significant NSW Government businesses are subject to the Commercial Policy Framework that is based on the commercialisation and corporatisation principles discussed earlier. These principles attempt to reflect the environment faced by a private sector firm in a competitive market. The Framework provides for the application of:

- commercially based targets, dividends and capital structures;
- regular performance monitoring;
- State taxes and Commonwealth tax equivalents;
- risk-related borrowing fees;
- the explicit funded "Social Programs" or Community Service Obligations (CSOs); and
- regulation equivalent to that faced by private sector companies.

2.1.18 All significant NSW GBEs are monitored on a quarterly (Category 1) or half–yearly (Category 2) basis by NSW Treasury (see **Table 2.1**). Note that in 2000 there are no Category 2 GBEs.

2.1.19 GBEs fall into 3 categories:

- those GBEs that have been or are intended to be corporatised under the *State Owned Corporations Act 1989*;
- those GBEs that have not been corporatised or privatised, but are subject to the Commercial Policy Framework; and
- those GBEs that, on the basis of risk and materiality, have not been corporatised or made part of the Commercial Policy Framework

2.1.20 The key elements of the Commercial Policy Framework are summarised in Table 2.1.

Table 2.1 NSW GBEs that have been or are intended to be corporatised.

No.	Industry	Government Business Enterprise	ABS PTE[1]	Treasury Monitor[2]	Cat.[3]	Already Priv'n	Already Corp'n	Date Priv'n/Corp'n	Comments
1	**Electricity**	Advance Energy	x	x	1		x	1/ 3/ 96	To be merged into Country Energy in 2001
2		Australian Inland Energy Water	x	x	1		x	1/ 3/ 96	
3		Delta Electricity	x	x	1		x	1/ 3/ 96	
4		Energy Australia	x	x	1		x	1/ 3/ 96	
5		Great Southern Energy	x	x	1		x	1/ 3/ 96	To be merged into Country Energy in 2001
6		Integral Energy	x	x	1		x	1/ 3/ 96	
7		Macquarie Generation	x	x	1		x	1/ 3/ 96	
8		NorthPower	x	x	1		x	1/ 3/ 96	To be merged into Country Energy in 2001
9		Pacific Power	x	x	1				
10		Eraring Energy	x	x	1		x	2/ 8/ 00	
11		Power Coal Pty Ltd	x						
12		Snowy Mountains Hydro Electricity Authority			3			later in 2001 (target)	
13		TransGrid	x	x	1		x	1/ 12/ 98	Subsidiary of Pacific Power. Jointly owned with Victoria and the Commonwealth.
14	**Finance**	Axiom Funds Management Corporation			3	X		16/ 5/ 97	
15		Government Insurance Office (GIO)		x	4	x		16/ 7/ 92	
16		NSW Treasury Corporation (TCorp)	PFE	x	1		x	1983	
17		State Bank of NSW		x	4	x		31/ 12/ 94	
18	**Gaming & Recreation**	NSW Lotteries	x	x	1		x	1/ 1/ 97	
19		Totalizator Agency Board of NSW (TAB)	x	x	4	x		6/ 98	
20		Zoological Parks Board of NSW	x	x	1				
21	**Housing**	City West Housing Pty Ltd	x	x	1				
22		Department of Housing	x	x	1				
23		Home Purchase Assistance Authority		x	1				To be absorbed into Department of Housing in 2001
24	**Ports & Waterways**	Darling Harbour Authority	x	x	1				Absorbed into Sydney Harbour Foreshore Authority in 2001.
25		Newcastle Port Corporation	x	x	1		X	1/ 7/ 95	
26		Port Kembla Port Corporation	x	x	1		x	1/ 7/ 95	
27		Sydney Ports Corporation	x	x	1		x	1/ 7/ 95	
28	**Transport**	Freight Rail Corporation	x	x	1		X	1/ 7/ 96	Govt announced intention to privatise in 2001 in conjunction with sale of NRC
29		Rail Access Corporation (abolished 1.1.01)	x	x	1		x	1/ 7/ 96	
30		Rail Services Australia (abolished 1.1.01)	x	x	1		x	1/ 7/ 98	Merged into Rail Infrastructure Corp
31		State Rail Authority of NSW	x	x	1				Merged into Rail Infrastructure Corp
32		State Transit Authority	x	x	1				
33		Rail Infrastructure Corporation	x	x	1		x	1/ 1/ 01	

No.	Industry	Government Business Enterprise	ABS PTE[1]	Treasury Monitor[2]	Cat.[3]	Already Priv'n	Already Corp'n	Date Priv'n/Corp'n	Comments
									Merger of RAC and RSA
34	**Water**	Broken Hill Water Board	x		3				Absorbed into Australian Inland Energy and Water
35		Cobar Water Board	x		3				
36		Coleambally Irrigation	x	x	1	x		9/ 6/ 00	
37		Fish River Water Supply Authority	x		1				
38		Hunter Water Corporation	x	x	1		x	1/ 1/ 92	
39		Murrumbidgee Irrigation	x	x	1	x		12/ 2/ 99	
40		Sydney Water Corporation	x	x	1		x	1/ 1/ 95	
41		Sydney Catchment Authority	x	x	1				
42	**Misc**	Chipping Norton Lake Authority			3				
43		Department of Public Works and Services		x	1				
44		First Australian National Mortgage Acceptance		x	5	X			NSW Gov 25% shareholder only
45		Fish Marketing Authority			3				Business of Sydney Fish Market Pty Ltd sold & site leased on 31/ 10/ 94.
46		Jenolan Caves Reserve Trust	x		3				Commercial Advisory Board has been established.
47		Landcom	x	x	1				Landcom has been reviewed for further restructuring, corporatisation from 1/ 7/ 01.
48		Lord Howe Island Board		x	3				
49		State Forests of NSW		x	1				
50		Sydney Harbour Foreshore Authority		x	1				
51		Superannuation Administration Corporation		x	1		x	26/ 7/ 99	
52		Waste Service NSW		x	1				

The Key to Table 2.1 is as follows:

[1] Public Trading Enterprises (PTEs) and Public Financial Enterprises (PFEs) as defined by the Australian Bureau of Statistics (ABS) in *Standard Economic Sector Classifications of Australia (SESCA) 1998.*

[2] GBEs monitored by Treasury on a quarterly or half–yearly basis are within the Commercial Policy Framework (CPF).

[3] On the basis of a risk and materiality assessment, Treasury has identified five financial monitoring programs. These are categorised as follows:

(1) Quarterly reporting and monitoring for:
- all State Owned Corporations (SOCs);
- all dividend paying GBEs;
- those GBEs which are assessed as having the potential in the medium term to become dividend paying; and
- high risk/ materiality GBEs.

(2) Half–yearly monitoring for GBEs in the medium risk/ materiality category.

(3) Portfolio monitoring exclusively by the relevant Minister, with relatively low risk exhibited.

(4) Post–privatisation monitoring for GBEs that are no longer owned by the Government. As the Government may bear ongoing financial risks, these require identification and management. Frequency of monitoring will vary depending upon circumstances of sale and the right of the Government to access information. Major privatised GBEs are to be reviewed at least on a quarterly basis.

(5) Businesses where the State has a minority interest as a shareholder are monitored quarterly, assuming that the shareholding is material and/ or the business is exposed to particular trading/ operating risks.

Performance Targets

2.1.21 GBE boards and management have clear performance targets, against which performance is assessed. These are set out in an annual contractual agreement between the Government business and the Government called a Statement of Financial Performance (SFP) for PTEs, or a Statement of Corporate Intent (SCI) for SOCs.

2.1.22 The performance targets focus on commercially based capital structures, return on capital and dividends, as well as the economic

and business assumptions that underlie the financial projections and targets. The first such agreements were entered into in 1993.

(a) Capital Structures

2.1.23 The Government has sought to ensure that the balance sheets of GBEs' are commercially sound with capital structures based on appropriate mixes of debt and equity.

2.1.24 The Government's 'Capital Structure Policy', which was introduced in 1994, establishes target capital structures on a case-by-case basis according to a debt level which:

- supports a good investment grade credit rating (ie 'A' or above) over the long term (generally five years);
- enables the financing of an approved capital expenditure program having regard to the current phase of the GBE's investment cycle;
- is capable of being repaid within a reasonable period; and
- provides flexibility for relevant contingencies.

2.1.25 The approach usually involves:

- development of a business profile;
- review of business plans and forecasts;
- analysis of business risks;
- modelling of cash flows;
- sensitivity analysis of key variables; and
- determination of a notional credit rating as a stand-alone entity.

2.1.26 This approach enables the Government's business managers to conduct their businesses with a greater degree of confidence and provides a framework for setting financial targets. It also provides more certainty to managers by constraining the Government's ability to seek excessive dividends. It ensures that investment decisions are made having regard to the true cost of capital for the entity.

(b) Return on Capital – Shareholder Value Added

2.1.27 Once the capital structure is set at an appropriate level then the focus of management is on attaining a commercial return on that capital.

2.1.28 Shareholder Value Added (SVA) is a profitability measure that takes account of how a Government business is using its capital. It compares the cost of capital for a Government business with benchmark rates of return appropriate for that business, given the

risks involved. The SVA approach provides guidance as to how effectively a business is using its capital. By ensuring the removal of any accounting measures that distort the measurement of wealth, it objectively measures the creation of value to its shareholders, who are ultimately New South Wales taxpayers.

2.1.29 The benchmark, ie opportunity cost of capital for each business, is established by calculation of its weighted average cost of capital (WACC). The WACC is derived through the application of the capital asset pricing model (CAPM). There are three basic elements of WACC - the cost of debt; the cost of equity; and the capital structure or mix of debt and equity.

2.1.30 The first two elements are addressed in the Capital Structure Policy. A government business' cost of debt is equal to the cost of servicing debt, which includes interest payments and any Government guarantee fee applicable. The cost of equity is specified as the prevailing return on a 10 year Commonwealth Bond plus the risk premium for the particular Government business. The debt/ equity ratio is set under the Capital Structure Policy, discussed above.

2.1.31 Most significant NSW GBEs are monitored under the SVA framework including both corporatised and non-corporatised businesses. The date of SVA implementation is shown in **Table 2.2**.

Table 2.2. GBEs using shareholder value added analysis to set financial targets.

Commenced 1997-98:	
Advance Energy	(former) Rail Access Corporation
Australian Inland Energy and Water	State Transit Authority
EnergyAustralia	Hunter Water
Great Southern Energy	Sydney Water
Integral Energy	Port Kembla Ports
NorthPower	Newcastle Ports
Macquarie Generation	Sydney Ports
Delta Electricity	Landcom
TransGrid	State Forests of NSW
Freight Rail Corporation	Waste Service NSW
Department of Housing	NSW Lotteries
Department of Public Works and Services	(former) Rail Services Australia
Land and Property Information NSW	Registry of Births Deaths & Marriages
Marine Ministerial Holding Corporation (since abolished)	Zoological Parks Board of NSW
Commenced 1999-2000:	
Sydney Harbour Foreshore	Fish River Water Supply

Authority Public Trustee	
Commenced 2000-01:	
Parramatta Sports Ground Trust Sydney Cricket & Sports Ground Trust	Sydney Catchment Authority Eraring Energy (formerly part of Pacific Power)

(c) Financial Distributions (Dividends)

2.1.32 Assuming satisfactory debt/ equity structures and return on capital are appropriate, the focus is on setting dividends that broadly reflect private sector practice.

2.1.33 NSW Treasury's Financial Distribution Policy deals explicitly with Government's role as shareholder of its businesses. The basic principle underlying the financial distribution policy is that Government businesses should be subject to the discipline of making dividend payments and capital repayments based on an evaluation of whether or not retention of earnings adds value for the shareholder.

2.1.34 A target dividend payment is negotiated as part of the process of developing a SFP/ SCI before the commencement of the financial year.

2.1.35 The Treasury has adopted a modified residual approach to dividend policy, whereby the quantum of dividends is a function of the availability of acceptable investment proposals and the dividend preferences of the Government as shareholder.

2.1.36 Under the pure residual dividend approach, as long as the business has investment projects whose returns exceed those that are required, it would use retained earnings and the amount of increased debt the equity base will support, to finance these projects.

2.1.37 The residual approach is modified to take into account the Government's preference as shareholder for a higher level of dividends than the private sector because of the greater difficulty in obtaining distributions in the form of capital gain. The residual dividend approach is further modified to take into account the Government shareholder's preference for a stable stream of dividends due to its funding commitments.

Performance Monitoring

2.1.38 Since the start of the 1990s, Treasury has undertaken regular financial monitoring of significant GBEs from a shareholder perspective. These businesses provide Treasury with quarterly reports including such information as business plans, operating budgets, cash flow statements, income and expenditure statements, balance sheets and management accounting data. The GBEs also report, on an exception basis, any risks that arise throughout the financial year. The reports are intended to provide early warning of problems which might arise, so that appropriate action may be taken where necessary.

2.1.39 The need for such monitoring arises because of the interaction of various interests that influence the performance of these businesses. Some Government businesses, particularly corporations, face real competition in the market place. However for others, performance monitoring also promotes yardstick competition in the provision of Government services that otherwise face little competition. Performance monitoring can act as a powerful internal management tool to examine the reasons for poor performance.

Payment of Taxes and Tax Equivalents

(a) State Taxes

2.1.40 Since 1 July 1994, all major NSW GBEs have been progressively required to make direct payments of State taxes, principally payroll tax, stamp duty and land tax. These State taxes were applied to most GBEs from 1 July 1995 with all commercial Government businesses paying tax equivalents from 1997-98.

(b) Commonwealth Tax Equivalents

2.1.41 At the March 1994 Premiers' Conference it was agreed in principle that States and Territories would impose uniform tax-equivalent regimes (TERs) on all GBEs by 1997, while the Commonwealth would amend its income and sales tax legislation to unambiguously exempt State enterprises from Commonwealth tax liabilities.

2.1.42 Commencing in July 1994, all major NSW PTEs were progressively required to make income and sales tax equivalent payments to the Consolidated Fund. Such a requirement helped put them on a competitively neutral footing with private sector businesses.

2.1.43 In 1998 the Commonwealth, States and Territories agreed, as part of the Intergovernmental Agreement to Reform Commonwealth-State Financial Relations, to introduce a National Tax Equivalent Regime (NTER).

2.1.44 Under the NTER, GBEs nominated by State and Territory Governments will be subject to an income tax equivalent regime administered by the Australian Taxation Office (ATO) from 1 July 2001. The use of the ATO as tax administrator will facilitate consistency in approach across jurisdictions and between the public and private sectors.

2.1.45 With the abolition of Wholesale Sales Tax (WST), States and Territories abandoned WST equivalent payments. All GBEs pay GST in the same manner as private enterprises.

Debt Guarantee Fees

2.1.46 GBEs benefit from the Government's Triple–A credit rating by virtue of their Government ownership and are able to obtain borrowings through Treasury Corporation (TCorp) more cheaply than comparable private sector firms.

2.1.47 Since 1990, GBEs with Government-guaranteed borrowings have been required to pay a credit–rating–based fee to the Consolidated Fund. The scheme is intended to:

- make up the difference between the interest paid by GBEs and what they would have paid had they been in the private sector;
- correct any distortions in GBE investment and pricing decisions;
- encourage better debt-management practices by GBEs by making them aware of the full cost of borrowing; and
- compensate the Government for the financial risk of guaranteeing debt repayment by GBEs.

2.1.48 The application of this policy ensures competitive neutrality with private sector businesses of similar risk which lack government backing and face correspondingly higher borrowing costs.

Equivalent Regulation

2.1.49 Many Government businesses gain exemptions from certain State legislation and regulations as a result of their status as an entity of the Crown or statutory authority. When a Government business is corporatised as a SOC, it automatically loses this status and therefore its exemption.

2.1.50 While a statutory SOC is an exempt public body for the purposes of the *Corporations Law*, the NSW *State Owned Corporations Act* does provide for various provisions of the *Corporations Law* to apply to statutory SOCs. The Act also provides for the constitution of a statutory SOC to contain *Corporations Law* provisions.

2.1.51 The *Competition Policy Reform (New South Wales) Act* also subjects SOCs and other NSW government businesses to *Part IV* of the Federal *Trade Practices Act 1974* dealing with restrictive trade practices.

2.1.52 The review and reform, under clause 5 of the CPA, of legislation which unjustifiably restricts competition is closely related to the competitive neutrality principle of imposing private sector equivalent regulation on Government businesses. New South Wales is subjecting legislation of uncertain competitive standing to a comprehensive review process which includes examination of the net public benefits of retaining or removing competitive restrictions. Remedial action is being taken where legislative restrictions are shown not to be in the public interest (ie. costs outweigh benefits and/ or less competition-restricting methods of achieving the Government's objectives are available).

2.1.53 Consistent with clause 5 (3), New South Wales has developed a timetable for the review, and where appropriate, the reform of all existing legislation that restricts competition.

Social Program Policy

2.1.54 The Government's Social Program Policy will be the main vehicle for meeting its social justice objectives through transparent payments from the Consolidated Fund to Government businesses that have either corporatised or adopted general pricing principles.

2.1.55 The Social Program Policy explicitly recognises that, in pursuing its core social responsibilities, the Government may wish to use Government businesses to achieve certain social justice objectives. The Policy has been carefully designed to ensure that social programs meet specified and relevant social objectives in a way that does not put the commerciality of the Government business at risk.

2.1.56 The key objectives of the Social Program Policy are to:

- provide a framework for the effective separation of commercial and non-commercial activities of Government businesses so that management may be given clear and non-conflicting objectives, thus enabling it to be held accountable for both commercial performance and the delivery of social programs;
- ensure social expenditures by Government businesses are subject to identified Budget funding, thereby making them transparent and enhancing Parliamentary accountability. Information on the funding of social program expenditures can be obtained from Budget Paper No 3 and information on social program funding received by individual GBEs can be obtained from their respective annual reports (annual accounts); and
- provide a framework to improve the effectiveness of social program expenditures through the application of appropriate review and evaluation processes.

Financial Appraisal Guidelines

2.1.57 In July 1997, the NSW Treasury issued the Financial Appraisal Guidelines to assist in the financial appraisal of the following projects:

- capital projects of GBEs and SOCs; and
- all projects of General Government sector agencies and Commercial sector agencies which involve a financing decision, including projects involving joint public/ private sector infrastructure provision.

2.1.58 The Guidelines outline the necessary steps in preparing a financial appraisal, including:

- defining the objectives and the scope of the project;
- identifying alternative options which meet the objectives of the project;
- identifying and measuring cashflows and their sensitivity for each of the options;
- selecting an appropriate discount rate;
- calculating summary measures of commercial merit for each option; and
- seeking independent review of the appraisal.

2.1.59 The Guidelines help improve the decision making process for significant projects undertaken by Government organisations. In so doing they ensure that GBE capital investment decisions are subject to similar project evaluation criteria that would be applied by the private sector.

2.2 Application of Competitive Neutrality to Significant Business Activities of General Government Agencies

Requirements of the Agreement

2.2.1 Clause 3(5) of the Agreement applies to agencies that are not significant GBEs within the meaning of Clause 3(4), but undertake significant business functions as part of a broader range of functions.

Clause 3(5) indicates that with respect to these business activities, the Parties will:

- where appropriate, implement the principles outlined in clause 3(4); or
- ensure that the prices charged for goods and services will take account, where appropriate, of full Commonwealth or State taxes or tax-equivalent regimes, debt guarantee fees and equivalent regulation, and reflect full cost attribution for these activities.

Application in New South Wales

2.2.2 In New South Wales, significant business activities of General Government agencies include those significant business activities undertaken by both:

- small non-budget-dependent General Government agencies; and
- budget-dependent General Government agencies.

2.2.3 The NSW Treasury has developed costing and pricing principles for General Government agencies that compete (or potentially may compete) with private sector entities.

2.2.4 A revised *NSW Treasury Policy and Guidelines Paper: Guidelines for Pricing of User Charges* (referred to above in 2.1.12) will be released in early 2001 as an update of guidelines released to agencies in 1997. It endorses an approach whereby prices for goods and services at least cover their 'avoidable costs' (ie. the costs that the business unit would not incur if it were to cease operations). This approach is consistent with the Productivity Commission's *Cost Allocation and Pricing*[1] paper that also advocates the use of an avoidable cost allocation method.

2.2.5 The approach taken in the Pricing Principles recognises that if a fully distributed cost base is used to set a minimum revenue target, then an agency could neglect opportunities to efficiently supply goods and services. To price in the short term at less than the fully distributed cost (provided avoidable costs are covered) also imbues government businesses with the same flexibility as their private sector counterparts in engaging in loss leader activities. Overall, it more closely replicates the pricing flexibility of competing private businesses.

2.2.6 Significant business activities of General Government agencies may be exempt from applying the principles where they can demonstrate that the cost of applying the principles exceeds the benefits of competitively neutral pricing. Where an exemption is sought the onus is on the Government business or parent agency to show and document that the economic and social costs of implementation outweigh the economic and social benefits.

2.2.7 Broadly the aim is for agencies to recover, in the short term, their marginal costs. However, the policy advises that engaging in such activities should be restricted to special market circumstances and should not contravene the provisions of Part IV of the *Trade Practices Act*.

2.2.8 In determining a competitively neutral cost base, all input costs and benefits accruing from government ownership are to be included. Costs will include, among other things, employee costs, materials, maintenance, depreciation, taxes, and a return on capital.

2.2.9 A listing of the NSW General Government agencies required to implement the pricing principles is provided in **Table 2.3**. The agencies supply goods or services subject to 'user charges' as defined by the Australian Bureau of Statistics.

[1] Wilson, S., Douglas, I., and Martyn, B., *Cost Allocation and Pricing*, Staff Working Paper, Productivity Commission, Canberra, 1998.

Table 2.3 NSW General Government Sector Agencies Required to Implement Pricing Principles.

No.	Government Purpose (ABS)[1]	Government Agency/ Activity	GGE (ABS)[2]	Treasury Monitor[3]	User[4] Charges	Sig[5]	Min[6]
	(01) General Public Services						
1		State Records	x	X	x		x
2		Audit Office of NSW	x	X	x	x	
3		Cabinet Office	x	X			
4		Independent Commission Against Corruption	x	X	x		x
5		Legislature	x	X	x		x
6		Local Government, Dept of	x	X	x		x
7		Ombudsman's Office	x	X	x		x
8		Parliamentary Counsel's Office	x	X			x
9		Premier's Department	x	X	x	x	
10		Public Trustee	x	X	x	x	
11		Registry of Births, Deaths and Marriages	x	X	x	x	
12		State Electoral Office	x	X	x		x
13		Treasury	x	X	x	x	
	(03) Public Order & Safety						
14		Attorney General's Dept	x	X	x	x	
15		Rural Fire Service	x	X	x		x
16		Corrective Services, Dept of	x	X	x	x	
17		Crime Commission, NSW	x	X	x		x
18		Director of Public Prosecutions, Office of	x	X	x		x
19		Fire Brigades, NSW	x	X	x	x	
20		Judicial Commission of NSW	x	X	x		x
21		Juvenile Justice, Dept of	x	X	x		x
22		Legal Aid Commission	x	X	x	x	
23		Police Integrity Commission	x	X			
24		Police, Ministry for	x	X	x		x
25		Police Service, NSW	x	X	x	x	
26		State Emergency Service	x	X	x		x
	(04) Education						
27		Board of Studies, Office of the	x	X	x	x	
28		Department of Education and Training	x	X	x	x	
	(05) Health						
29		Health Care Complaints Commission	x	X	x		x
30		Health, Dept of	x	X	x	x	
	(06) Social Security & Welfare						
31		Aboriginal Affairs, Dept of	x	X			
32		Department of Ageing, Disability and Homecare	x	X	x		x
33		Commission for Children and Young People			x		x
34		Community Services Commission	x	X	x		x
35		Community Services, Dept of	x	X	x	x	
36		Ethnic Affairs Commission	x	X	x	x	
37		Women, Dept for	x	X	x		x
	(07) Housing & Community Amenities						
38		Aboriginal Housing Office		X	x		x
39		Environmental Trust	x	X			
40		Environment Protection Authority	x	X	x		x
41		Honeysuckle Development Corporation	x	X	x	x	
42		Ministerial Development Corporation	x	X			
43		Urban Affairs and Planning, Dept of	x	X	x	x	
	(08) Recreation & Culture						
44		Art Gallery of NSW	x	X	x	x	
45		Arts, Ministry for the	x	X	x		x
46		Sydney Entertainment Centre	x		x		x
47		Australian Museum	x	X	x	x	
48		Bicentennial Park Trust	x	X	x		x
49		Casino Control Authority	x	X	x		x
50		Centennial Park and Moore Park Trust	x	X	x	x	
51		Film and Television Office, NSW	x	X	x		x
52		Gaming and Racing, Dept of	x	X	x		x
53		Heritage Office	x	X	x		x

54	Historic Houses Trust of NSW	x	X	x	x	
55	Museum of Applied Arts and Sciences	x	X	x	x	

No.	Government Purpose (ABS)[1]	Government Agency/Activity	GGE (ABS)[2]	Treasury Monitor[3]	User[4] Charges	Sig[5]	Min[6]
56		National Parks and Wildlife Service	x	X	x	x	
57		Olympic Coordination Authority	x	X	x	x	
58		Royal Botanic Gardens and Domain Trust	x	X	x		x
59		SOCOG	x	X	x	x	
60		Sport and Recreation, Dept of	x	X	x	x	
61		State Library of NSW	x	X	x	x	
	(09) Fuel & Energy						
62		Coal Compensation Board	x	X	x		x
63		Ministry of Energy and Utilities	x	X	x		x
64		Mineral Resources, Dept of	x	X	x	x	
65		Sustainable Energy Development Authority	x	X			
	(10) Agriculture, Forestry, Fishing & Hunting						
66		Agriculture, Dept of	x	X	x	x	
67		Fisheries, NSW	x	X	x	x	
68		Land and Water Conservation, Dept of	x	X	x	x	
69		Luna Park Reserve Trust	x	X	x		x
70		State Valuation Office (part of Dept of Public Works & Services since 1/ 4/ 99)	x	X	x	x	
71		Meat Industry Authority (abolished 4/ 8/ 00; functions transferred to Safe Food Production NSW)	x	X	x		x
72		Rural Assistance Authority	x	X			
73		Safe Food Production NSW	x	X	x	x	
	(11) Mining, Mineral Resources, Manufacturing & Construction						
74		Building & Construction Industry - Long Service Payments Corporation	x	X			
75		Public Works and Services, Department of	x	X	x	x	
	(12) Transport & Communications						
76		Marine Ministerial Holding Corporation (abolished 1/ 7/ 00)	x	X	x	x	
77		Motor Accidents Authority	x	X			
78		Olympic Roads and Transport Authority	x	X	x	x	
79		Roads and Traffic Authority	x	X	x	x	
80		Transport, Dept of	x	X	x	x	
81		Waterways Authority	x	X	x	x	
	(13) Other Economic Affairs						
82		Fair Trading, Dept of	x	X	x	x	
83		Registry of Encumbered Vehicles	x	X	x	x	
84		Independent Pricing & Regulatory Tribunal	x	X	x		x
85		Industrial Relations, Dept of	x	X	x		x
86		Insurance Ministerial Corporation	x	X	x		x
87		Land and Property Information NSW	x	X	x	x	
88		State and Regional Development, Dept of	x	X	x		x
89		Tourism NSW	x	X	x		x
90		WorkCover Authority	x	X	x	x	
91		Worker's Compensation (Dust Diseases) Board	x				
	(14) Other Purposes						
92		Crown Transactions	x	X			

Key to Table 2.3:

1 Categories as per the Australian Bureau of Statistics (ABS) in *Standard Economic Sector Classifications of Australia (SESCA) 1998*.

2 General Government Enterprises (GGEs) as defined by the ABS in *GFS Australia: Concepts, Sources and Methods*.

3 These agencies/ activities are monitored by Treasury on the basis of a risk and materiality assessment.

4 A user charge is a voluntary payment to a PTE or a general government entity paid by a consumer for services provided. It is of a commercial rather than a regulatory nature and provides an identifiable benefit to the payer. (ABS: *GFS Australia: Concepts, Sources and Methods*). The existence of user charges is a broad indicator of a business activity.

5 Significant > $2 million user charges revenue p.a. as based on 2000–01 Budget estimates.
6 Minor < $2 million user charges revenue p.a. as based on 2000–01 Budget estimates.

Application to Government Businesses Not Subject To Executive Control

2.2.10 In November 2000, the Council of Australian Governments (CoAG) approved a number of changes to National Competition Policy arrangements. One of the changes relates to Governments' CN obligations in cases where a Government business is not subject to the executive control of the Government (e.g. universities). CoAG agreed that in such cases governments were expected to adopt a 'best endeavours' approach in applying CN. It was further agreed that this would require parties, at a minimum, to provide a transparent statement of CN obligations to the entity in question.

2.2.11 The Government's revised policy statement on CN will make it clear that it is NSW Government policy to encourage these businesses to comply with Government policy and guidelines on competitive neutrality.

2.3 Application to Local Government

2.3.1 In its *Policy Statement on the Application of National Competition Policy to Local Government* published in June 1996, the Government set out how the principle of competitive neutrality would be applied to local government in NSW. The Policy Statement was prepared in consultation with local government and makes a series of commitments with respect to the ongoing implementation of competition reforms.

2.3.2 The Government has also issued the following guidelines for the assistance of councils:

- *Competitive Tendering Guidelines* (January 1997);
- *Pricing and Costing for Council Businesses: A Guide to Competitive Neutrality* (July 1997); and
- *Guidelines on the Management of Competitive Neutrality Complaints* (November 1997).

2.3.3 The Government also conducted workshops across NSW and continues to provide assistance, via the Department of Local Government, to councils in applying NCP principles.

2.3.4 As indicated in the Policy Statement, different requirements apply to council businesses depending on whether they are category 1 or category 2 businesses. Category 1 businesses have an annual sales turnover of $2 million and above, while category 2 businesses have a turnover of less than $2 million.

2.3.5 As category 2 businesses are less likely to have significant adverse resource allocation impacts at either State or national levels, the requirements applying to these businesses are less strict. For example, councils can determine the extent to which category 2 business activities are to be separated from its associated mainstream activities. Similarly, councils are only required to apply full cost attribution where practicable. In contrast, these requirements are mandatory for category 1 businesses. However, in all other respects (eg. making subsidies explicit and complying with the same regulation as the private sector) the requirements are the same.

2.3.6 Previous NSW Government annual reports to the NCC have indicated a high level of compliance in applying competitive neutrality principles to council businesses.

2.4 Reciprocal Charging Arrangements between State and Local Government Businesses

Requirements of the Agreement

2.4.1 Under the principle of competitive neutrality, there is a requirement to ensure there is competitive neutrality between State, Local Government and privately owned businesses selling into markets

Application in New South Wales

2.4.2 Under existing arrangements between State and Local Government businesses, the State benefits from a variety of council rate exemptions for its GBEs. Similarly, Local Government businesses benefit from some services either provided at no charge by GBEs and SOCs or on a non-commercial basis.

2.4.3 A Reciprocal Charging Committee has been formed to undertake a Review into the Reciprocal Charging Arrangements between State and Local Government Businesses.

2.4.4 The primary focus of the Review is to inventory existing concessional charging arrangements between State and Local Government businesses, assess them with regard to charging principles and set a timetable (subject to Government endorsement) for phasing in a reciprocal charging regime and removing the concessional arrangements.

2.4.5 The Committee has developed the broad principles upon which a reciprocal charging regime would be based and has compiled indicative data regarding the likely financial impact of making State GBEs and Local Government businesses subject to such a regime. A

more detailed assessment of the financial impact is scheduled for completion by end of 2001.

2.5 Competitive Neutrality Complaints Mechanism

Requirements of the Agreement

2.5.1 Clause 3(8) of the Agreement requires governments to include a complaints handling mechanism in their Policy Statements on Competitive Neutrality and publish allegations of non-compliance in their annual reports.

Application in New South Wales

2.5.2 This section deals with the Government's complaints systems and details of complaints received except in relation to Local Government. Local Government complaints and complaint handling arrangements are addressed below at 2.5.24.

2.5.3 An actual or potential competitor of a GBE may wish to make a complaint if it perceives it is being adversely affected or being denied a market opportunity because of a GBE's net competitive advantage resulting solely from its public ownership.

The arrangements outlined in the *Policy Statement on the Application of Competitive Neutrality* consist of two stages:

1. the party lodging a complaint is to approach the relevant government agency to clarify and attempt to resolve the matter (this first step also acts as a filter to eliminate trivial complaints or misunderstandings); and
2. if necessary, to refer the matter for independent assessment by a third-party complaints mechanism in circumstances where the complainant is not satisfied with the response of the agency involved.

2.5.4 Previously, interim arrangements existed whereby all stage-two complaints were to be investigated by IPART under section 9 (1)(b) of the *Independent Pricing and Regulatory Tribunal Act 1992*.

2.5.5 Formal complaints handling arrangements were introduced with the passing of the *Independent Pricing and Regulatory Tribunal and other Legislation Amendment Act 2000*. The Act establishes a dual mechanism for dealing with competitive neutrality complaints against significant government businesses which involves the IPART and the State Contracts Control Board (the SCCB). The relevant sections of the Act commenced on 17 July 2000.

2.5.6 The SCCB will investigate complaints that a government business has failed to comply with competitive neutrality principles in relation to tender bids made by a NSW Government business in response to an invitation for tenders. The IPART will deal with other complaints. Complaints involving local council businesses

will continue to be dealt with separately under the arrangements established by the Department of Local Government, except where the complaint also involves a NSW Government business.

2.5.7 Under the new arrangements the Premier may refer to the SCCB/ IPART, for investigation and report, a complaint about a significant government business, with respect to:

(a) an alleged failure of a Government business to comply with competitive neutrality principles in relation to any or all of its public trading activities; or

(b) the inappropriate manner in which competitive neutrality principles are applied by or to a Government business.

2.5.8 The IPART/ SCCB report is to contain a statement of its findings and recommendations about the complaint. Where a complaint is upheld, the report will also contain a statement about:

(a) any need for changes to the conduct of the government business to ensure future compliance with competitive neutrality principles; and

(b) any consequent policy changes that should be considered by the Minister or Government.

2.5.9 The Premier may also refer to the IPART a matter relating to any adverse or unforeseen consequences of applying competitive neutrality principles to a public authority or class of public authorities for investigation and report. This was foreshadowed in the Government's 1996 Policy Statement on competitive neutrality.

2.5.10 IPART and SCCB are required to use their best endeavours to complete an investigation and report within 10 weeks after receiving a complaint. Within 8 weeks of receiving an IPART/ SCCB report, the portfolio Minister is required to prepare a written response to the report. The response must include a statement as to whether or not the recommendations have been adopted or are proposed to be adopted, and must include a statement of the reasons why any recommendation will not be adopted.

2.5.11 IPART/ SCCB reports and the portfolio Minister's response are to be made publicly available.

Complaints about Government Businesses

2.5.12 During 2000 the Premier did not receive any new requests for competitive neutrality complaints to be referred to the IPART or the SCCB for investigation. However, The Cabinet Office continued to provide advice to interested parties on competitive neutrality policy and complaint handling arrangements in NSW.

Rail Freight Corporation

2.5.13 As reported in the Government's previous annual report a complaint was received from a party who fund and advise a private sector competitor of the NSW Government-owned Rail Freight Corporation (FreightCorp). The complainant wrote to the Premier in September 1999 alleging that FreightCorp receives the following benefits as a result of its public sector ownership:

- preferential access to strategic assets including port and metropolitan rail terminals;
- exclusive receipt of payments for Community Service Obligations (CSOs);
- payments for CSOs which are unconnected to the costs incurred and services delivered;
- the Department of Transport tends to act as an agent of FreightCorp rather than as a neutral regulator; and
- the ability to price without regard for rates of return.

2.5.14 The Premier's response noted that the Department of Transport had already commenced a review of FreightCorp's CSO arrangements and that it was expected to address a number of the issues raised in the complainant's letter. The objective of the review was to improve the CSO contract between the Department and FreightCorp. Consequently, the Premier deferred a decision on the IPART reference until the review was complete and the Government had considered its recommendations.

2.5.15 To assist the review, the Department of Transport engaged consultants Booz Allen and Hamilton (BAH) to conduct a thorough and independent assessment of FreightCorp's CSO arrangements.

2.5.16 Consultants BAH affirmed the general understanding that an exclusive contract with a purchaser of freight services (ie the Minister for Transport) does not, on face value, contravene competitive neutrality principles. The key requirement for competitive neutrality is of course to ensure that CSO arrangements are fully transparent. BAH found that there was room for improvement in this area and made recommendations aimed at achieving greater clarity of purpose and transparency in relation to CSO arrangements.

2.5.17 The Government has developed new CSO contracts with FreightCorp that are substantially in accord with BAH's recommendations. The new 2000-01 contracts require FreightCorp, among other things, to develop separate business cases for each

CSO service to further define revenues and costs on a disaggregated basis.

2.5.18 The Government's policy response to the complaint is addressed in paragraphs 2.5.22 - 2.5.23 below.

National Rail Corporation Ltd

2.5.19 In October 1999 the Commonwealth Competitive Neutrality Complaints Office (CCNCO) received and investigated a complaint against the National Rail Corporation Ltd (NRC). NRC is owned by the Commonwealth (73 per cent), NSW (19 per cent) and Victorian (8 per cent) Governments.

2.5.20 The complainant alleged that NRC was in breach of the competitive neutrality policies of its owner governments because it had not earned a commercial rate of return on its assets for the financial years 1995-96, 1996-97 and 1997-98.

2.5.21 The CCNCO's findings noted that:

- the NRC has not earned a commercial return on its assets over the last three years;
- given the circumstances facing the NRC's formation and recent operation, the failure to return a commercial rate is not sufficient to find that the NRC's performance has been in breach of CN requirements;
- the NRC's corporate plan projections to 2002 are not sufficient to meet CN requirements in the longer term, even though they provide for a commercial rate of return; and
- if a government business is unable to operate commercially in the longer term, one option is for the owner government to sell the business (the CCNCO noted that this is the announced intention of the owner jurisdictions).

Government Response

2.5.22 In September 2000 the NSW Government announced its intention to privatise its supplier of rail freight services, FreightCorp. The sale of FreightCorp will be undertaken in parallel with the Commonwealth Government's sale of the National Rail Corporation. The sale is likely to occur in 2001 and will be subject to a number of conditions pertaining to regional services and employment levels.

2.5.23 The Government agrees with the NCC's assessment that "*Privatisation of FreightCorp would remove any competitive neutrality obligations facing New South Wales in relation to this business*" (Third Tranche Assessment Framework, p 10.3). Given the Government's decision to privatise FreightCorp, and the prospective nature of the

complaint mechanism, the Government sees little point in referring the complaint to IPART for investigation at this point in time. However, should for any reason, this context change the Government would give further consideration to an IPART referral.

ARRB Transport Research Ltd

2.5.24 In November 2000 the CCNCO wrote to the Premier advising that it had received a complaint from Capricorn Capital against the Australian Road Research Board (ARRB). ARRB Transport Research Ltd is a public company, limited by $20 guarantee per member. Members are the State/ Territory road authorities, the Commonwealth Department of Transport and Regional Services and the Local Government Association. It is noted that the members do not have any equity in the company. However, they do have some control over the business, thereby giving it a 'government' status, even though technically, it is not a government-owned business.

2.5.25 As with the complaint against National Rail, NSW has agreed to the complaint being investigated by the CCNCO. As at 31 December 2000, the CCNCO's investigation was still in progress.

Application to Local Government

2.5.26 As indicated in the Policy Statement, local councils are responsible in the first instance for dealing with complaints regarding the application of competitive neutrality principles. The Department of Local Government reviews those complaints which councils are unable or have failed to resolve or where, after consideration by the council, the complainant requests a review by the Department, and in the circumstances, the request is reasonable. Complainants are also able to approach the Department of Local Government in order to obtain additional information concerning the application of competitive neutrality principles.

2.5.27 As indicated in the Policy Statement, a decision by a council not to apply competitive neutrality principles to a particular business activity requires an independent cost benefit analysis to substantiate the decision. To date, no such exemptions have been sought. Accordingly, all competitive neutrality complaints are investigated as per the above arrangements.

2.5.28 Complaints dealt with by councils are reported in their annual reports. The NCC has previously advised that only those complaints that progress to the second stage (those formally investigated by the Department of Local Government) are required to be included in annual reports to the NCC.

Complaints about Local Government

2.5.29 During 2000 the Department of Local Government did not receive any competitive neutrality complaints that needed to be referred to a local council for initial investigation. Similarly, the Department

was not requested to review any responses to complaints against councils during 2000.

3 Structural Reform of Public Monopolies

Requirements of the Agreement

3.1.1 Clause 4(2) of the Agreement indicates that, before competition is introduced to a sector traditionally supplied by a public monopoly, the non–contestable regulatory or other functions of the monopoly need to be separated from those commercial activities that can be subject to competition. This eliminates any conflict of interest with commercial functions and facilitates competitively neutral regulation of public and private businesses.

3.1.2 Clause 4(3) also specifies that when introducing competition to a market traditionally supplied by a public monopoly, and before a public monopoly is privatised, governments are required to undertake a review into the following matters:

- the appropriate commercial objectives for the public monopoly;
- the merits of separating any natural monopoly elements from potentially competitive elements of the public monopoly;
- the merits of separating potentially competitive elements of the public monopoly;
- the most effective means of separating regulatory functions from commercial functions of the public monopoly;
- the most effective means of implementing the competitive neutrality principles set out in the Agreement;
- the merits of any community service obligations undertaken by the public monopoly and the best means of funding and delivering any mandated community service obligations;
- the price and service obligations to be applied to the industry; and
- the appropriate financial relationships between the owner of the public monopoly and the public monopoly, including the rate of return targets, dividends and capital structure.

Application in New South Wales

3.1.3 The NSW Government has been systematically applying the principles of structural reform to its public monopolies.

3.1.4 In the energy sector the generation assets of Pacific Power were transferred to Eraring Energy which was incorporated on 2 August 2000. The objectives of this reform were to:

- establish a focused generation company with clear commercial objectives;
- enable effective performance monitoring by allowing the separation and separate measurement of the generation activities; and
- establish a governance arrangement consistent with other electricity supply participants by subjecting the corporatised entity to the *State Owned Corporations Act* rather than the *Pacific Power Act*.

3.1.5 The Government has recently approved a proposed merger of three NSW Government distributor-retailers consisting of Advance Energy, Great Southern Energy and NorthPower. The new entity is to be called Country Energy. Implementation of the merger will be subject to clearance by the Australian Competition and Consumer Commission (ACCC). Until this is obtained the three businesses will continue to be managed separately. The merger has been proposed to enhance the scale and hence the commercial viability of country retailers in advance of full retail contestability.

3.1.6 In September 2000, IPART released a discussion paper and draft guidelines on the *Ring Fencing of New South Wales Electricity Distribution Network Service Providers*. The guidelines provide for the accounting and functional separation of prescribed monopoly distribution services from other contestable services provided by electricity distribution businesses. The guidelines aim to maintain the economic benefits of competition by ensuring that electricity distribution businesses do not use their monopoly positions to influence outcomes in unregulated competitive markets through preferential dealings with their associated contestable business or cost shifting between their competitive and monopoly business segments. The NSW Government is participating in the finalisation of ring fencing arrangements.

3.1.7 In the transport sector, prior to 1996, all passenger and freight services were provided by the vertically integrated State Rail Authority (SRA). The Transport Administration Amendment (*Rail Corporatisation and Restructuring) Act 1996*, separated the operation of rail services from the ownership, provision of access and the maintenance components of the SRA. The four transport entities created were:

- State Rail Authority – focused on providing customer services;
- Rail Services Authority – responsible for track maintenance;

- Rail Access Corporation – responsible for managing the rail network and administering access by public and private operators; and
- FreightCorp – responsible for non–passenger freight services.

3.1.8 In its first tranche assessment**,** the NCC judged that New South Wales had generally met its obligations in relation to structural reform of public monopolies.

3.1.9 The 2000 Glenbrook Rail Inquiry found, however, that the issue of rail safety had not been given sufficient weight following the 1996 reforms. In response to the findings of the Inquiry's interim report, the NSW Parliament passed legislation in late 2000 which:

- merged the Rail Access Corporation and Rail Services Authority into a new Rail Infrastructure Corporation (RIC) that owns and operates track infrastructure;
- established the Office of Rail Regulator to control and monitor service standards;
- allowed network control functions to be transferred to other operators including the SRA (for CityRail network); and
- formalised the Office of Co-ordinator General, with sufficient powers to implement structural changes as necessary.

3.1.10 The Government will make decisions on the responsibility for safety regulatory functions following the release of the Inquiry's final report in 2001.

3.1.11 As noted in Chapter 2, the NSW Government announced its intention to privatise its supplier of rail freight services, FreightCorp in parallel with the Commonwealth Government's sale of National Rail Corp. The sale is likely to occur in 2001 and will be subject to a number of conditions pertaining to regional services and employment levels.

3.1.12 In the rural bulk water sector, all irrigation schemes have been privatised. Following the corporatisation of the Murrumbidgee and Colleambally irrigation schemes on 1 July 1997, the Government shifted ownership of both schemes to local water users, respectively on 12 February 1999 and 9 June 2000. Regulation is now explicitly applied by the Environment Protection Authority (waste water and drainage controls through licences) and the Department of Land and Water Conservation (access to water under a water management works licence). The new companies are also required to comply with land and water management plans as a condition of their water management works licences.

3.1.13 The Sydney Catchment Authority (SCA) commenced operation in July 1999. The Authority has responsibility for water catchment management and took over the ownership, operation and maintenance of bulk water storage facilities in the catchment. Sydney Water Corporation (SWC) retained the distribution and retail functions of water supply in its existing areas of operation. The Minister responsible for the SCA is separate from the Minister responsible for the SWC.

3.1.14 State Water was established by the Department of Land and Water Conservation in response to a need to internally ring fence responsibility for bulk water supply services. The water business became fully operational on 1 July, 1998 and its accounts have been restructured with separate reporting. Water supply and sewerage services undertaken by local government in New South Wales have been internally separated from the councils' planning and regulatory functions.

3.1.15 On 26 July 1999 the Superannuation Administration Authority (SAA) was corporatised. The SAA provided scheme administration services to the trustees of State public sector superannuation schemes. The *Superannuation Administration Authority Corporatisation Act 1999* provided for the execution of transitional contracts between the new Corporation (SAC) and the trustees of public sector defined benefit and accumulation schemes. The transitional contracts expire on 30 June 2005 and 31 December 2002 respectively. At the end of the respective contract periods, the contracts will be put out to tender and the SAC will have to compete with private sector providers to retain the business. The 1999 legislation also enabled the SAC to compete for superannuation administration business outside the NSW public sector.

3.1.16 On 5 July 2000 the *Independent Pricing and Regulatory Tribunal and Other Legislation Amendment Act* took effect. In augmenting its monopoly pricing, industry investigation and third party access functions, the new legislation provides for IPART to assume a utilities regulation function for electricity, gas and water in which it will:

- advise the portfolio Minister on the grant and conditions of licences;
- audit compliance with licences, including taking on the functions of the electricity Licence Compliance Advisory Board and the water Licence Regulator, with the help of an advisory group; and
- impose sanctions for breach of licence with cancellation powers to remain with the Minister.

The rationale for these changes is to ensure a more transparent independent regulatory approach and over time more closely align the regulatory regimes consistent with the objective of best practice regulation.

3.1.17 In addition to these initiatives, the State is committed to meeting the requirements of the *Agreement to Implement National Competition Policy and Related Reforms*. This entails structural reform of the State's water, gas and road transport sectors and establishment of an interstate electricity market. Detail on the application of these reforms is provided in Chapter 8 *Application of the Agreement to Implement Related Reforms.*

4 Electricity

4.1 Reviews of Code Provisions

4.1.1 The NCC has requested information on the progress made on the reviews required by the Australian Competition and Consumer Commission (ACCC). The key reviews of interest to the NCC are discussed below.

Capacity Mechanisms

4.1.2 The ACCC published a final determination on Volume of Lost Load (VoLL) and capacity mechanisms and the price floor on 20 December 2000. This review is therefore complete and its recommendations are currently being implemented in accordance with the ACCC determination.

Transmission and Distribution Pricing

4.1.3 In accordance with the Code, National Electricity Code Administrator (NECA) submitted an application to the ACCC in July 1999 in relation to network pricing and market network service providers. The ACCC published a draft determination on 12 December 2000. New South Wales considers that the most significant element of delay in resolving this review has been the time taken by the ACCC, a factor beyond the control of the jurisdictions and National Electricity Market (NEM) institutions.

Ancillary Services

4.1.4 Clause 3.11.1(c) of the Code requires National Electricity Market Management Company (NEMMCO) to 'investigate, consult with Code Participants in accordance with the Code consultation procedures and report to NECA by 1 March 1999 on the possible development of market-based arrangements for the provision of ancillary services'.

4.1.5 The Ancillary Service Reference Group (ASRG) was established in mid 1998, to carry out the review required by Clause 3.11.1(c). The ASRG had representation from the generation, distribution, retail and transmission sectors of the industry, as well as NECA and NEMMCO. In addition the ACCC have nominated an observer who attended all ASRG meetings.

4.1.6 Until the review was completed, schedule 9G of the Code was intended to operate. At the commencement of the development of Schedule 9G, the Jurisdictions anticipated that:

- the Ancillary Services arrangements provided for in Schedule 9G would be implemented in mid to late 1997 under the NEM1 arrangements;
- the time allowed to complete the Ancillary Services review was two years following commencement of the NEM; and
- the NEM would commence in March 1998.

4.1.7 This original timetable would have allowed the Ancillary Services Review, required by clause 3.11.1(c), to be based upon up to two years of operational experience of the Schedule 9G arrangements. However:

- the Schedule 9G Ancillary Service arrangements were not implemented as part of the NEM1;
- the ACCC, as a condition of the Interim Authorisation of the Code, reduced the timeframe for the Ancillary Services review so that it would be implemented, by 1 July 1999; and
- the NEM did not commence until December 1998.

4.1.8 These delays would have impacted on the effectiveness of the Ancillary Services Review if it were to be concluded by 30 March 1999, because there would have only been limited experience of the strengths and weaknesses of the Schedule 9G Ancillary Service arrangements at that time.

4.1.9 Further, the complex and challenging nature of the Ancillary Services Review was clearly underestimated. There was also a need to have a considerable consultation period, as there were a number of firmly held divergent views amongst industry participants. Due to the complexity of the issues under review and the diverging views of the industry, this review was not completed until October 1999.

4.1.10 The major recommendations of the report were:

- the removal of mandatory provision of Frequency Control Ancillary Services (FCAS);
- the introduction of market arrangements for the procurement of certain Ancillary Services;
- the allocation of Ancillary Services costs on a "causer pays" principle or to those who benefit, where possible; and
- the introduction of these new arrangements in three phases.

4.1.11 NEMMCO submitted Code changes to the Code Change Panel to give effect to the recommendations of the report in December 1999. These Code changes (with amendments proposed by Code Change

Panel) were submitted to the ACCC for authorisation in August 2000. In the interim, the Schedule 9G arrangements have been extended to August 2001.

4.1.12 NSW has met or is well advanced to meeting its commitments on structural reform. Generation, transmission and distribution are separated, with several competitors in the generation sector and many competitors in the retail sector.

4.2 Market Arrangements

Transitional and Institutional Arrangements

(i) Derogations

4.2.1 New South Wales currently has a number of Code derogations in place within chapter 9, part B of the Code. At this stage, NSW has no intention to extend the existing derogations in chapter 9 beyond their present terms.

4.2.2 However, additional derogations may be necessary to support the introduction of full retail competition (FRC) for the smallest customers.

(ii) Vesting Contracts

4.2.3 As part of the package of retail reforms the Government has determined that there should be a safety net tariff for small customers. To achieve this objective in the absence of vesting contracts the NSW Government implemented the Electricity Tariff Equalisation Fund (ETEF). The ETEF provides a mechanism for managing the risks of supplying electricity to small retail customers at fixed, regulated tariffs. Under the ETEF arrangement, all customers that consume less than 160 MWh per annum have the right to an offer of supply at a tariff determined by IPART, and from 1 January 2002 will have the choice of remaining on or returning to a standard regulated contract.

4.2.4 The Fund is designed to ensure that the businesses that are obliged to deliver regulated tariffs to small customers are not commercially disadvantaged nor given a competitive benefit.

4.2.5 The recent experience of retailers in California highlights the potential for major losses if there is no mechanism in place to manage the volatility of wholesale prices. Similarly, an arrangement that allows retailers to earn a windfall on sales to regulated customers would have distortionary consequences for the retail market if the windfall was used to subsidise sales to contestable customers.

4.2.6 The NSW Treasury Position Paper, *Replacement for Vesting Contracts, November 2000*, examined a series of options for managing wholesale price volatility and emphasised the need for a set of arrangements that were competitively neutral:

> As a matter of principle the Government believes that retailers supplying regulated customers should earn a regulated return. To the extent that financial surpluses or deficits arise from the fact that the price paid by customers may not be the same as the price retailers receive, arrangements need to be put in place to ensure that retailers will not earn a windfall nor suffer financial loss (p.8).

4.2.7 The Fund guarantees standard retailer suppliers a fixed margin for supplying small customers at prices determined by IPART. IPART was asked to set the margin based on the costs and risks of supplying regulated customers. Retailers cannot earn any more than the regulated retail margin on sales to regulated customers.

4.2.8 A regulated energy charge (REC) has been calculated in order to provide standard retailers with a regulated retail margin within the range determined by IPART. For the six months ending period 30 June 2001, the retail margin assumed is 8.5 per cent of projected regulated sales revenue, including a 1.5 per cent allowance for greenhouse compliance. For each standard retailer, the REC was calculated after deducting projected average network charges, pool fees, energy losses and assumed 8.5 per cent retail margin from the current average regulated retail price.

4.2.9 Standard retail suppliers (initially the state-owned retailers) are required to pay into the Fund when wholesale prices are lower than the REC component they recover from regulated customers. When wholesale prices are higher than the REC component in the regulated tariff, the ETEF will compensate standard retailers from the surpluses collected earlier to ensure they earn a regulated return.

4.2.10 In the event there is a sustained rise in pool prices and there are insufficient funds, NSW Government owned generators are required to top-up the ETEF to the extent they have benefited from the high wholesale prices that caused the Fund to be depleted.

ETEF and Full Retail Competition

4.2.11 The implementation of FRC will allow any licensed retailer to make an offer to any customer in New South Wales from 1 January 2002. While the Government has a policy of ensuring that regulated retail tariffs are available to small retail customers, there is nothing preventing any retailer from entering into a commercially negotiated contract with these customers.

4.2.12 The Government was eager to promote the scope for retail competition by ensuring that there is a sufficient retail margin to attract entrants into retailing. IPART was therefore asked to take into account the Government's policy of encouraging competition for all customers in the setting of regulated retail tariffs. To this end, the REC in the regulated tariff is based on the long run marginal cost of electricity generation. Therefore, if a retailer can enter into a hedging contract with a generator to supply electricity at less than the LRMC, the retailer should be able offer incentives for customers to switch away from regulated arrangements.

(iii) Institutional Framework

4.2.13 The NCC states the jurisdictions are ultimately responsible for NECA and NEMMCO and that it intends to discuss a possible review of the NEM institutional framework with the EMG. New South Wales is of the view that some refinement of NEM institutional arrangements may be desirable to ensure effectiveness and appropriate allocation of responsibility.

Structure of the Generation Sector

4.2.14 The third tranche assessment framework (p6.7-6.8) has listed the structure of the generation market as an issue, in part because of high pool prices.

4.2.15 The NCC is questioning whether higher prices are due to the structure of the generation market not being sufficiently competitive, perhaps because the market is too thin or perhaps because there is a bias against additional transmission capacity in the code. The Council does note that higher prices have led to additional generation capacity and seems to favour additional interconnection.

4.2.16 Although the NCC has raised the issue of higher pool prices, and the potential influence of the structure of the generation sector, it does not directly draw a link between pricing and structure.

4.2.17 While New South Wales agrees that links between higher pool prices and the structure of the generation sector are not evident, new generation and interconnection undertaken on a competitively neutral basis would continue to be welcome.

4.2.18 Structural reform commitments, ownership neutrality and minimising intervention in market outcomes also continue to be important as priorities for ongoing reform in the generation sector.

Interconnects

(i) Regulated Interconnects

4.2.19 As previously argued, New South Wales notes that the Government has done everything in its power to promote interconnection where economic. NSW and the government-owned transmission network service provider, TransGrid, have given their full support to Queensland-New South Wales Interconnect (QNI) as well as to South Australia-New South Wales Interconnects (SNI) in light of the lack of generating capacity and competition in South Australia and surplus capacity in NSW.

4.2.20 The progress of the SNI approval process has been as follows:

4.2.21 In early 1998 TransGrid requested NEMMCO that the Inter-regional Planning Committee (IRPC) evaluate SNI for a regulated status. NEMMCO handed down a determination on 15th June 1998 that a regulated status for the proposal could not be justified under the Code guidelines that existed at that time.

4.2.22 During the debate following this determination, it was generally recognised that the existing 'Customer benefit test' in the Code was unworkable. Subsequently, NEMMCO requested NECA to prepare a Code change to allow application of a new test to be determined by the ACCC. It was expected that the new test would be based on "market benefit".

4.2.23 TransGrid submitted another application to NEMMCO on 27th October 1998 to re-evaluate the revised SNI proposal in expectation that the test would be replaced with a workable alternative within the timeframe of NEMMCO/ IRPC deliberations.

4.2.24 Due to uncertainties as to the timing of the adoption of a new regulatory test and what the test would actually involve, TransGrid requested NEMMCO/ IRPC to suspend consideration of TransGrid's application on 30th July 1999.

4.2.25 On 23rd September 1999, the ACCC handed down a draft determination on the Code change and released a draft of the proposed regulatory test. The ACCC gave final approval to the Code changes on 20th October 1999 and they were gazetted in South Australia on 18th November 1999. However, the ACCC did not release the regulatory test until 22nd December 1999.

4.2.26 On 7th March 2000, TransGrid requested NEMMCO/ IRPC to recommence the evaluation of the SNI project. Since this date the IRPC and the Interconnector Options Working Group (IOWG) have been carrying out technical analysis of the SNI and alternative projects and gathering data for the evaluation. However, most of the Transmission Network Service Provider (TNSPs) involved in this work have also been involved in the QNI commissioning program. QNI commissioning was given priority over SNI work because of the very significant economic benefits of QNI and the

resulting integration of Queensland into the National Electricity Market and the resulting enhancements to wholesale competition.

4.2.27 Compounding these delays further were the delays affecting the Transmission and Distribution Pricing Review. As discussed above, NECA submitted an application to the ACCC in July 1999 in relation to network pricing and market network service providers. This application was with the ACCC from July 1999 to December 2000. The absence of certainty on transmission pricing matters has made it impossible for interested parties to assess the impact of transmission charges on South Australian customers from SNI or unregulated alternatives. Indeed, vested interests opposing SNI have been able to exploit this uncertainty to misinform stakeholders and attempt to build more widespread opposition to the project.

4.2.28 Taken together the impact of QNI commissioning, the uncertainties over the status of TransEnergy's Murraylink Project, and the unresolved transmission pricing framework, the approval process for SNI has been delayed about another nine months, none of which can reasonably be attributed to the conduct of the NSW Government or TransGrid.

Concerns with Regulatory Test

4.2.29 NSW has some concerns that the regulatory test promulgated by the ACCC in December 1999 to be applied to SNI is capable of being gamed by participants with a vested interest in continuing high price differentials between regions.

4.2.30 This risk arises because the ACCC's regulatory test requires that a proposed regulated augmentation maximise net benefits in light of **committed or anticipated** developments within the market. This might allow, for example, generators in a high-price region to create the impression that new generation or unregulated network capacity will be developed to alleviate tight supply conditions, even when these plans are at best tentative. Thus, rather than being considered as an alternative option to a regulated link, the proposed new capacity is taken as a given, thereby reducing the projected benefits of a proposed regulated link and consequently the chances for such a link to pass the test.

(ii) Unregulated Interconnects

4.2.31 New South Wales shares many of the concerns of the NCC in relation to unregulated interconnects. In particular, we believe that the ACCC has not clearly made a public benefit case for the authorisation of Market Network Service Provider (MNSP) provisions in light of potential market power concerns. This matter is currently before the ACCC as part of the Transmission and Distribution Pricing Review process and NSW will be making a submission setting out our concerns.

Full Retail Competition (FRC)

(i) Benefits Realised to Date

4.2.32 The NCC has identified two possible indicators of success in the introduction of retail contestability, price reductions achieved and the proportion of customers which have changed supplier.

Price Reductions

4.2.33 According to Electricity Prices in Australia 2000/ 2001, published by the Electricity Supply Association of Australia, NSW has the cheapest electricity prices on average across mainland Australia (contestable and non-contestable). Only Tasmania is cheaper with its low operating cost hydro-electricity plant.

4.2.34 NSW Treasury estimates that between May 1995, when the Government commenced its electricity reforms, and December 2000, NSW electricity customers have saved over $1.6 billion in real terms on their power bills. All groups of customers have benefited from those reforms (see Table 1).

Table 1: NSW Electricity Prices

Electricity Retail Price Reductions **May 1995 to December 2000** In real terms in 2000/ 2001 $s **Customer Class**	$million		
	Regulated	**Negotiated**	**Total**
40 GWh pa	51.77	464.40	516.17
4 GWh pa	74.71	314.06	388.78
750 MWh pa	56.57	157.97	214.53
160 MWh pa	80.32	55.96	136.28
Small Commercial	199.22		199.22
Residential	171.34		171.34
Total	**633.93**	**992.39**	**1626.32**

4.2.35 Across the NEM capital cities, Sydney and Melbourne still have the lowest retail prices by a significant margin (5.61c/ kWh in Sydney and 5.38c/ kWh in Melbourne compared with 7.07c/ kWh in Adelaide).

Customer Transfer Rates

4.2.36 Transfer rates indicate the degree to which customers move to a different retailer, but care must be taken in using transfer rates as an indicator of the success of competition. This is because transfer rates do not account for benefits customers derive when they stay with their existing retailer. Price reductions and services that better meet customer needs, whether they switch or not, are the true indicators of the success of competition. Nevertheless, transfer rates can provide some insights to the operation of the contestable market. A number of surveys have been conducted on customer switching rates since customers started becoming contestable.

4.2.37 The Electricity Supply Association of Australia conducted a survey in September 1997 when only customers consuming above 4 GWh per annum were contestable. The survey found that 47.6% had changed supplier since retail competition commenced in October 1996.

4.2.38 An Australian Industry Group survey from December 1999 found that customer churn was still very pronounced with some 30% of survey respondents who have negotiated a contract in the last 12 months changing supplier.

4.2.39 Respondents are still preferring short contract periods of around two years. This means that the majority of customers will come

back to the market at regular intervals, encouraging competition and newer retail entrants.

(ii) Progress in Implementing FRC

4.2.40 The NSW Government is continuing to implement full retail competition in keeping with its announced timetable. In accordance with the Government's timetable 100-160 MWh per annum customers became contestable on 1 January 2001. Treasury expects that the remaining customer tranches of 100-40MWh per annum and 40-0MWh per annum will become contestable on 1 June 2001, and 1 January 2002, respectively. An important proviso is that business systems necessary to support customer transfers must be in place, tested and operational prior to this final tranche being able to choose their supplier. This is to ensure that customer choice is meaningful, and that difficulties with systems do not adversely affect customer perceptions of the benefits of choice.

4.2.41 The Government is working closely with NEMMCO and industry to ensure that business systems are in place within the Government's timetable. Implementation of systems is at this stage on schedule.

(iii) Approach to FRC

4.2.42 The NSW Government is committed to least cost implementation of FRC, and to encouraging innovation in the delivery of retail electricity and related services. To ensure this is the case, the Government is:

- taking an active role in overseeing the contract for procurement of centralised national systems; and
- developing a regulatory framework for the implementation of competition which will allow, wherever possible, market forces to drive outcomes (see discussion below on metering approach).

4.2.43 FRC will extend the benefits of competition. The Government is firmly of the view that these benefits will outweigh the costs of implementing FRC.

National Consistency

4.2.44 NSW has led a move by the NEM jurisdictions to take a national approach to the implementation of FRC. A formal Memorandum of Understanding prepared by the NSW Government has been signed between each of the NEM Jurisdictions to provide a framework for consultation and decision making on national systems. This process has led to the swift resolution of a significant number of issues and allowed procurement of centralised systems to commence in a relatively tight timeframe.

4.2.45 Victoria and New South Wales are leading the implementation of FRC in the NEM and are working together to ensure a high level of consistency in FRC arrangements. In particular, metrology procedures are being developed in parallel across New South Wales and Victoria and are substantially consistent. Furthermore, discussions are ongoing with the Office of the Regulator General in Victoria, with a view to maintaining consistency in arrangements for regulating marketing and retailer/ network relationships.

4.2.46 It is anticipated that as other jurisdictions implement FRC, they will take up the regulatory arrangements in place in New South Wales and Victoria as appropriate. New South Wales will strongly support this approach.

Metering Approach

4.2.47 The NSW Government is seeking to minimise barriers to customer switching. A key barrier could be the requirement for customers to install interval meters, which measure consumption for each half hour, before they are able to transfer to a different retailer. To avoid imposing these costs on customers, the Government is implementing load profiling, which will allow customers to switch retailer while using their existing meter. However, the Government is also seeking to ensure interval meters are utilised where the additional information from those meters is able to deliver value to customers.

4.2.48 The NCC has flagged support for approaches to FRC for small customers that do not impose unjustifiably high upfront costs, but leave scope for innovation. The New South Wales solution balances these competing objectives by providing a low cost load profiling approach for the production of half hourly data but at the same time encouraging the installation of interval metering technology by allowing any customer (or the customer's retailer) to install an interval meter where the benefits of doing so (ie more accurate allocation of consumption over time) outweigh the costs. Over time, as the profile shape becomes more reflective of consumption by smaller customers, the incentives for customers with more favourable consumption patterns to move to interval meters will increase.

4.2.49 The costs of the metering solution compared to the profiling solution have been analysed in Victoria and New South Wales by various parties including:

1. Intelligent Energy Systems[2] (IES) for the Victorian Distribution Businesses;

[2] Evaluation of Metering Strategies for Full Retail Contestability, Intelligent Energy Systems, December 1999 (Minor Revisions January 2000)

2. The Energy Policy Division of the Department of Natural Resources and Environment;
3. The Office of the Regulator-General[3] (Office); and
4. SRC International[4] and New South Wales Treasury[5] for New South Wales Government.

4.2.50 The studies conclude that at this stage roll-out of interval meters is economic for only a small group of customers in the sub 160MWh per annum group.

4.2.51 Based on the studies completed to date, KPMG Consulting acting on behalf of the Victorian and New South Wales Governments has estimated the incremental costs of the metering solution and compared that with the estimated cost for the profiling solution. The KPMG report found that the profiling solution is significantly cheaper for small customers based on a $75 cost for interval meters. Meters have some additional benefits, but these are not considered to justify their additional costs. This position will change over time as meter costs fall.

- The Government is keen to ensure that there are no barriers to efficient take up of interval meters.

4.2.52 The NCC should note that there will be a NEM wide review in 2003, which will explicitly consider, *inter alia*, whether there are barriers to 'consumers adopting economically efficient metering solutions or other economically efficient technology'.

[3] Office of the Regulator-General, *Consultation paper No.4, Electricity Retail Competition for Small Customers – Customer Metering*, May 2000
[4] Contestability for Residential and Other Low Use Electricity Customers, SRC International, December 1998
[5] Metering and Settlement Strategies for Full Retail Competition – Discussion Paper, NSW Treasury, Full Retail Competition Group, NSW Treasury, August 2000

5 Gas

5.1.1 The NCC has identified two third tranche gas commitments:

- effective implementation of the 1997 Gas Agreement, in terms of implementation of a national regime for third party access to natural gas pipelines, satisfactory progress in phasing out transitional arrangements, and the introduction of retail competition; and
- review and appropriate reform of legislative and regulatory barriers to free and fair trade in gas.

Access

5.1.2 As noted in the Framework, New South Wales has enacted the Gas Pipelines Access Law and National Gas Access Code.

5.1.3 The NSW access regime was certified effective by the Minister for Financial Services and Regulation on the 29th March 2001. Certification had been delayed owing to the High Court decision in Re Wakim ex parte McNally. The *NSW Federal Courts (Consequential Provisions) Act 2000,* which addressed the re Wakim issue in the NSW access legislation, commenced on 23 November 2000.

Phasing Out of Transitional Arrangements

5.1.4 New South Wales phased in access rights for all remaining customers on 1 July 2000, well within the 1997 Gas Agreement timetable of 1 September 2001 for the phasing out of all transitional arrangements. Contestability has not been an issue in New South Wales as there were no exclusive franchises for either the retailing or reticulation of natural gas.

Retail Competition

5.1.5 The COAG agreements do not extend to an obligation to develop or implement arrangements to support full retail competition (FRC) in gas, or to implement an appropriate customer protection regime, and the NSW Government's Policy Framework to Support Rail Competition in Gas recognises that the development of systems to support FRC in gas is a matter principally for the gas businesses. Having said that, the NSW Government continues to actively facilitate the work of industry to ensure that the supporting systems are designed to allow efficient, cost effective and timely transfer of customers between retailers.

5.1.6 New South Wales has made significant progress in assisting industry to develop the arrangements necessary to enable multiple retailers to operate within networks and to transfer customers between each other, including the following:

- business rules have been developed to govern transactions between retailers and network operators. These are to be approved by the Minister for Energy in the near future;
- the business rules form the basis of the supporting retail market systems to be provided to retailers and network operators to carry out the functions of:
  - delivery point registration and transport;
  - management of metering data; and
  - nomination, balancing and reconciliation procedures.
- An industry-based body (the Gas Retail Market Company) has been established to administer the business rules and to engage and fund the retail market systems.

5.1.7 New South Wales is also revising its customer protection regulatory framework in a number of areas, for example:

- to ensure appropriate service quality standards are met;
- to implement a retailer of last resort scheme;
- to impose an obligation to offer supply to customers whose premises are physically connected to the network.

5.1.8 The business rules and the retail market systems are being developed to take account of convergence opportunities between gas markets in different jurisdictions and between gas and electricity markets (ie energy markets).

5.1.9 The retail market scheme proposed for NSW has been expressly designed to facilitate its adoption in other jurisdictions to promote consistency and cost minimisation in the provision of retail market systems. Further, the development of an appropriate customer protection regime for full retail competition has sought to balance the needs of customers in the transition to full competition against the creation of new barriers to entry for retailers.

5.1.10 The issue of different administrative and policy arrangements applying in different markets is being addressed by the Gas Policy Forum (GPF), comprising jurisdictions, industry and regulators. New South Wales is an active participant in the GPF and will work with other jurisdictions to encourage the adoption of compatible

arrangements and to promote inter-jurisdictional harmonisation of business rules where this is plausible and appropriate.

Legislative Reform

5.1.11 The agreement to adopt AS 2885 to achieve uniform national pipeline construction standards has been maintained in the making of the *NSW Pipelines Regulation 2000* which requires licensed pipelines to be constructed to that standard.

5.1.12 A competition review of the *NSW Pipelines Act 1967* concluded that there were no significant anti-competitive provisions in the legislation. As such, no legislative amendments were required in order to fulfil New South Wales obligations under the COAG agreement.

5.1.13 In terms of the effectiveness of the Pipelines Act generally, particularly the approval processes, New South Wales has consulted with industry on an extensive revision of the legislation through an Issues Paper. The results of that consultation have been incorporated into a Proposals Paper which will be released for further consultation, to be followed by drafting of the new legislation.

6 Water

6.1 Introduction

6.1.1 This chapter presents information about the progress of New South Wales in achieving the outcomes set out in the Council of Australian Governments (COAG) Strategic Water Framework 1994. For ease of reference, the information is presented within the structure of the COAG Framework document. Each section contains:

- the text of the Framework;
- where considered necessary, NSW's interpretations of the Framework wording;
- a summary of the NCC third tranche assessment requirements; and
- the NSW report against the Framework and NCC criteria.

6.1.2 Key acronyms in this chapter are:

ANZECC:	Australian and New Zealand Environment and Conservation Council
ARMCANZ:	Agriculture and Research Management Council of Australia and New Zealand
AWT:	Australian Water Technology
BAR:	Bulk Access Regime
DLG:	Department of Local Government
DLWC:	Department of Land and Water Conservation
DUAP:	Department of Urban Affairs and Planning
EPA:	Environment Protection Authority
HRC:	Healthy Rivers Commission
HWC:	Hunter Water Corporation
IBAR:	Initial Bulk Access Regime
IPART:	Independent Pricing and Regulatory Tribunal
LIS:	Line in the Sand
LWRRDC:	Land and Water Resources Research and Development Corporation
MDBC:	Murray Darling Basin Commission
MDBMC:	Murray Darling Basin Ministerial Council
MUs:	Metropolitan urban water suppliers
NMUs:	Non-metropolitan urban water services providers
NWQMS:	National Water Quality Management Strategy
S&RD:	State and Regional Development
SCA:	Sydney Catchment Authority
SCARM:	Standing Committee on Agriculture and Resource Management
SWC:	Sydney Water Corporation
TCM:	Total Catchment Management
WMA:	Water Management Act

WSAA: Water Services Association of Australia
WSD: Water Supply, Sewerage and Stormwater Drainage

6.2 General Policy

Framework Requirements

6.2.1 In relation to water resource policy, the Council agreed:

1. that action needs to be taken to arrest widespread natural resource degradation in all jurisdictions occasioned, in part, by water use and that a package of measures is required to address the economic, environmental and social implications of future water reform;
2. to implement a strategic framework to achieve an efficient and sustainable water industry comprising the elements set out in 6.3.1 through 6.12.1 below;

NSW Interpretation

Natural Resource Degradation

6.2.2 There are essentially two categories of impacts occasioned by water use:

(i) impacts due to changes in flow regimes and inundation patterns (disturbance of the ecology of rivers and wetlands) as a result of water extraction and regulation of flows by dams and weirs; and

(ii) impacts relating to water quality (turbidity, salinisation and chemical pollution).

6.2.3 Reforms addressing these impacts must endeavour to balance the complex economic, social and environmental dimensions of the problems and produce net public gains. In cases where environmental reform requires changes in water use, the impacts on local communities must be considered.

Strategic Framework

6.2.4 The strategic framework is interpreted to be a set of integrated, whole-of-government water reform objectives. The majority of these objectives are being implemented and funded through the NSW Government's 1995 and 1997 water reform packages and the Water Management Act 2000.

An Efficient and Sustainable Water Industry

6.2.5 An efficient water industry puts water to the highest value use and recovers the full attributable user share of the economic costs of resource management, while maximising water-use efficiency through best practice in water delivery and on-farm usage. A sustainable water industry preserves and supports the environmental and social systems on which it depends.

NSW Report

Action to Arrest Widespread Natural Resource Degradation

6.2.6 Following the COAG and Murray Darling Basin Ministerial Council (MDBMC) cap initiatives, the NSW Government began a comprehensive water reform process. A major water reform package was announced in September 1995, followed by a second $117 million package in August 1997, with an additional $3.01 billion package to fix urban wastewater and stormwater problems, referred to as the Waterways Package. In 2000, new and comprehensive water management legislation was passed by the NSW Government. The primary aim of the water reforms is to arrest natural resource degradation and place the New South Wales water industry on an ecologically and economically sustainable footing.

1995 Water Reform Package

6.2.7 The first initiatives in 1995 were to:

- develop interim river flow and water quality objectives for the State's waters;
- provide water to the environment in two major river systems - the Gwydir and the Macquarie;
- introduce water pricing reform; and
- establish a Water Advisory Council of community and industry representatives to advise the Minister for Land and Water Conservation on reform implementation.

1997 Water Reform Package

6.2.8 The second phase of the agenda, launched in 1997, aimed to achieve three major outcomes:

- Better environmental outcomes for water management, through expansion of the program for providing water to meet environmental needs to cover all the regulated river systems (ie those with major rural dams) and the Barwon-Darling River system. The environmental flow rules for these systems commenced in 1998.

- Enhancement of investment strategies for the rural sector through improved water access rights and a better water market, direct Government support (including structural adjustment) to water users and through finding a balance in cost sharing arrangements through the Independent Pricing and Regulatory Tribunal process.
- A community/ government partnership approach to water management through the establishment of water management committees to advise on the annual environmental flow rules for the regulated rivers and the Barwon-Darling and to develop water management plans for the unregulated rivers and groundwater systems. This included the establishment of an Independent Advisory Committee on Socio-Economic Analysis to provide advice on the assessment of social and economic impacts associated with water management plans and to audit the on-going assessment process.

Water Management Act 2000

6.2.9 The Government also embarked on a comprehensive review of its water legislation. After some two and a half years of public consultation the *Water Management Act 2000* was passed in December 2000.

6.2.10 The principal objects of the Act are to provide for the sustainable and integrated management of the State's waters for the benefit of both present and future generations.

6.2.11 The Act encompasses and builds on most of the initiatives of the Government's water reform agenda by:

(i) providing for improved environmental health of the State's waters through formal recognition of environmental water sharing provisions, which require water to be set aside for environmental health as a priority, and provisions for the management of activities that threaten waters and their dependent ecosystems;

(ii) providing for shared government/ community responsibility for water management, through the establishment of a comprehensive community-based planning framework, particularly the formal establishment of water management committees to prepare statutory water management plans and the inclusion in the statute of the Water Advisory Council; and

(iii) providing greater economic benefits for individuals and communities by clarifying and strengthening water rights; improved compliance tools and more efficient pricing and allocation of resources.

Implementing the Strategic Framework

6.2.12 Implementation of the strategic framework in New South Wales is being undertaken for the urban, non-metropolitan urban and bulk water sectors through an integrated whole-of-government process. Lead agencies are DLWC, EPA, HRC, DLG and IPART. New South Wales progress in implementing the eight elements of the framework is described in detail under the relevant section headings but may be summarised as follows:

Pricing

6.2.13 Oversighted by IPART, pricing reform is being implemented for all water sectors. IPART has pricing oversight for all sectors except for the NMUs, for which it has provided pricing principles. In line with the Framework objectives:

- consumption-based pricing has been or is being introduced across the rural bulk water, MU and NMU sectors;
- cross subsidies are being removed or made transparent; and
- price paths towards full cost recovery are being established (SWC, HWC, SCA and prices for bulk water users in some valleys are already at full cost recovery).

6.2.14 DLWC has prepared Developer Charges Guidelines to assist councils (NMUs) to calculate full cost recovery development charges for growth works in country New South Wales. These have been produced under the principles applied by IPART for Sydney Water and Hunter Water.

Water Allocation

6.2.15 Improved certainty in water users' access to water is being provided via the development of water sharing plans which once approved, will be in effect for 10 years. These water sharing plans will provide firstly for environmental requirements and basic landholder rights and set the rules which determine the water available for licensed water users. These rules will be set for the 10 years. The result will be greater certainty for water users regarding the availability to users. Water sharing plans for the major regulated river systems, groundwater systems and a number of unregulated river sub-catchments will be determined by December 2001. In addition the Water Management Act now provides for much longer licence periods and the linkage of licences to the water management plans.

6.2.16 Implementation programs are to be developed by the (DLWC) for the practical day to day implementation of water management plans. There will be a mid-term review of the plans, which will

include an audit of the implementation of actions and outcomes specified in the plan.

6.2.17 They will be publicly exhibited before they are finally approved by the Minister.

Healthy Rivers Commission

6.2.18 The Healthy Rivers Commission (HRC) was established in September 1995 to examine, and recommend to Government, river flow and water quality objectives for critical coastal catchments. The HRC has completed its inquiries into the Williams, Hawkesbury-Nepean, Shoalhaven, Clarence and Bega catchments. The Commission has also completed a report on strategic issues arising from inquiries into coastal catchments and more recently a specific inquiry into coastal lakes. Inquiries are proposed or have commenced for the Tweed/ Brunswick, Hastings/ Manning, Richmond, Georges and Hunter Rivers.

Trading

6.2.19 New South Wales has a long history of both temporary and permanent trading of regulated surface water allocations. More recently, transfer mechanisms have been extended to accommodate the trial of inter-valley and inter-state transactions. The separation of access licences from the approvals under the Water Management Act for water use and the water management works, will mean that water rights are no longer tied to land. This will open up and extend opportunities for water trading. Statewide water trading principles are now being developed and will be the basis for the local trading rules to be developed in the water sharing plans. A public register of access licences and approvals is also being established.

Institutional Reform

6.2.20 Comprehensive institutional reforms have been, or are in the process of being implemented to ensure:

- a fully integrated, whole-of-government approach to resource management;
- the institutional separation of management, regulatory and service provision;
- improved efficiency in service delivery;
- that all New South Wales water sectors address the corporatisation / privatisation and administrative requirements of the Competition Principles Agreement (CPA); and

- adoption of a partnership approach to the management of water resources, to give constituents a greater degree of responsibility.

Consultation and Public Education

6.2.21 The implementation of the Framework is supported by extensive consultation and public education programs described under the section on consultation and public education later in the report.

The Environment

6.2.22 The New South Wales 1995 and 1997 water reforms and the *Water Management Act 2000* comprise a powerful integrated package of initiatives (outlined in sections 6.2.1 and 6.12.1).

6.3 Pricing: General

Framework Requirements

6.3.1 in relation to pricing, the Council agreed:

(a) in general

(i) to the adoption of pricing regimes based on the principles of consumption-based pricing, full-cost recovery and desirably the removal of cross-subsidies which are not consistent with efficient and effective service, use and provision. Where cross-subsidies continue to exist, they be made transparent;

(ii) that where service deliverers are required to provide water services to classes of customer at less than full cost, the cost of this be fully disclosed and ideally be paid to the service deliverer as a community service obligation.

NSW Interpretation

6.3.2 The New South Wales approach explicitly recognises that existing asset bases are a function of investment practices and Government policies (policies that preceded the development of the COAG Water Reform Framework and the adoption of commercial approaches by water businesses). The approach is designed to ensure that after drawing the 'line in the sand' (LIS) all costs are fully recovered including the full opportunity cost of capital.

6.3.3 New South Wales notes that different methods for measuring a cross-subsidy provide a range of results that can be used to either support or refute the existence of the cross-subsidy. It is considered desirable to use one or more of the following approaches to reduce the likelihood of inefficient cross-subsidies:

- location-specific costing and pricing arrangements;
- appropriate structural and/ or accounting separation; and/ or
- use of developer charges designed to ensure that charging for new developments reflects the true costs of providing water and waste water services in those areas.

6.3.4 Under the NSW Social Policy Program, CSOs are defined as non-commercial activities which are carried out pursuant to a Government directive, have a clear social benefit and are funded from the State Budget. In circumstances where service providers are required by Government direction or similar mechanism to provide such services to consumers at less than the full cost of the service, this must be disclosed and made transparent. Ideally, the service should be paid as a CSO, equivalent to the difference between the charge paid by consumers and the full price of the service.

NCC Third Tranche Assessment Criteria

- Demonstrate identification and transparent reporting of objectives and size of all cross-subsidies.
- Where a cross-subsidy has efficiency or effectiveness implications that are sufficient to undermine the policy objectives of the COAG Framework, justify the rationale for retaining the cross-subsidy, including the objectives of the cross-subsidy and why these objectives could not be achieved more effectively by another means.
- Mechanisms in place to ensure ongoing effective treatment of cross-subsidies in the future (for example, guidelines, independent regulation, future reviews).
- Where prices are below incremental cost, any shortfall in total revenue recovered through prices above stand alone cost should be transparently reported.
- Where inconsistent with efficient and effective service provision and use, cross-subsidies should be removed or replaced with a transparent CSO.
- State and local government water businesses to provide information on the size and objectives of CSOs.
- An effective framework for identifying, costing, funding, delivering and reporting on State and local government CSOs.
- Evidence that this framework is leading to CSOs that are clearly defined, have an explicit public benefit objective, are transparently reported and are consistent with the aims of COAG pricing reforms.

NSW Report

Compliance with Consumption-based Pricing, Full Cost Recovery and Treatment of Cross-subsidies

6.3.5 In New South Wales, IPART has oversighted the prices of SWC, HWC, Gosford and Wyong Councils since 1992. The Tribunal released medium term price paths for all the metropolitan urban service providers (MUs) in 2000. The SCA was established in 1999. Initially, the SCA's charges to SWC were set in a Bulk Water Supply Agreement. The terms of this agreement were reviewed by IPART, and in October 2000, IPART released a price path that runs till June 2005. The price path for the other service providers runs till June 2003. IPART also released a new price determination for developer charges imposed by the MUs in October 2000. Under the determination, the four agencies must have new development servicing plans, which detail the basis on which developer charges are calculated, in place by 1 July 2001.

6.3.6 IPART also sets charges for State Water on an annual basis and determines a resource management charge which is imposed by DLWC on SCA and HWC.

6.3.7 In relation to NMUs, IPART undertook an inquiry into pricing principles for local water authorities which was released in September 1996. Those principles are currently being applied to the 124 NMUs in New South Wales.

6.3.8 New South Wales has been at the forefront in introducing two-part tariffs, comprising access and usage components to MUs and NMUs. The usage component takes into account the opportunity cost of water usage and is consistent with the recommendations of the Industry Commission's 1992 Inquiry into water resources and waste water disposal.

6.3.9 The progress of the water industry sectors towards achieving full economic cost recovery is detailed below under the relevant specific sections of the Strategic Framework.

6.3.10 IPART has adopted a policy of two part tariff pricing and the phasing out of property value based charges. Implementation has significantly reduced the scope for inefficient cross-subsidisation within the NSW water industry.

6.3.11 Considerable progress has been made towards eliminating cross-subsidies in the NSW MU sector. SWC's remaining non-residential property value based charges are being phased out, with only $12 million in revenue estimated for 2003. Previously property value based rating systems resulted in substantial cross-subsidies in charging arrangements.

6.3.12 For instance, in 1992-93 residential customers accounted for 64% of water use and made up 90% of customers served. However, their contribution to revenue was only 50%. The non-residential sector contributed 50% of revenue, but accounted for only 10% of properties and used only 36% of water. The cross-subsidy from the non-residential sector to the residential sector was estimated to be $300 million per year.

6.3.13 Between 1992-93 and 1999-2000, property value based rates (the major source of the cross subsidies), were reduced by $376 million or 90%, from a peak of $418 million per annum. The proportion of revenue from non-residential properties fell to 28% and the proportion of usage based revenue increased from 20% to 46% over the same period. On current projections, revenue from property value based rates will decrease to $12 million for the SWC and to $1 million for the HWC by 2003.

6.3.14 Developer charges are being used to recover the full costs of providing water and sewerage infrastructure to new development areas. These charges have reduced the scope for cross-subsidies in relation to new developments.

6.3.15 HWC has eliminated price differences for all customers, including sewer use charges for residential and non-residential customers. Both SWC and HWC have location specific developer charges, which aim to address locational cross-subsidies inherent in their uniform annual (postage stamp) charging structure. HWC has also introduced a location-based water usage charge for customers with usage exceeding 50,000 kilolitres per year and applying only to usage exceeding 50,000 kilolitres. The new charge reflects the level of infrastructure commanded by these customers.

6.3.16 For bulk rural water, two-part tariffs have been introduced or are being introduced for all water sources (this entails the introduction of metering on unregulated rivers), and pricing reform has seen a steady increase in revenue on a path to full cost recovery. Comprehensive reporting by State Water and DLWC of costs on a regional and activity basis has made it possible to identify subsidies and to estimate the user share of attributable operation, regulation and resource management costs.

6.3.17 To provide full transparency, DLWC has published its water-related costs, fully disaggregated by function (ie. operator, regulator, resource manager), regional location (the 35 State Water valleys and areas plus SWC and HWC) and water source (regulated surface water, unregulated surface water and groundwater).

6.3.18 IPART used the differentiated cost information in determining 1997-98 bulk water prices, which were valley and water source based. IPART's latest determination in September 2000 will result in an

average increase in bulk water prices of 8% across all water sources. By generating an additional $3.3m the 2000-01 bulk water prices continue progress towards IPART's full cost recovery target established in July 1998.

6.3.19 Remaining subsidies for the New South Wales rural water industry are provided from within DLWC's various water programs. Budget funding for these programs currently covers the cost of most resource management and regulatory activities as well as the balance of State Water's operational and capital costs that are unrecovered from users. IPART determines the pace at which costs attributable to water users can be recovered. Among other things, IPART is required to take into account the impact of price increases on customers. Further details on progress in this area are provided under the section dealing with progress in achieving COAG's specific requirements for rural water reform.

6.3.20 Applying IPART's pricing principles for local water authorities is a crucial first step towards systematic reform and the removal or transparency of cross subsidies in the NMU sector. More than 40% of New South Wales's 126 NMUs are subject to consumption-based pricing through two-part tariffs.

6.3.21 DLWC has prepared Developer Charges Guidelines to assist councils to calculate full cost recovery development charges for growth works in country NSW. These have been produced under the principles applied by IPART for Sydney Water and Hunter Water.

6.3.22 The NSW Government presently provides funding to local councils under its Country Towns Water and Sewerage Program. Consistent with COAG principles, major reforms to this program under the August 1997 water reform package involve encouraging councils to be financially self-sufficient, together with increased emphasis on initiatives to improve planning and operational management. Government funds have been entirely directed to 'backlog' works required to meet public health and environmental standards, and reasonable operational levels of service for present populations. Local councils are now responsible for meeting the full cost of works to meet growth needs as well as renewals.

Community Service Obligations

6.3.23 Under the NSW Social Policy Program (SPP), CSOs are defined as non-commercial activities that are carried out pursuant to a Government directive, have a clear social benefit and are funded from the State Budget. New South Wales considers that water supply agencies should seek to recover the full economic costs of such activities. Accordingly, where the Government directs an agency to carry out activities for which the costs cannot be fully recovered from customers then in principle, these should be funded via transparent CSOs.

6.3.24 The SPP provides for costing of CSO payments for subsidised operations using the avoidable cost method. In the case of CSO payments for price concessions (eg pensioner rebates) it is considered that these should ultimately be costed on the basis of fully distributed efficient costs (adjusted, if appropriate, for additional demand generated by the lower price). However as an interim measure, where the immediate introduction of fully distributed costing would result in a significant compliance burden, the foregone revenue approach is considered an acceptable alternative.

6.3.25 The MU agencies receive CSO payments from the State Budget, primarily for pensioner rebates and exemption of certain categories of properties from payment of access charges (eg charities and schools).

6.3.26 For example, SWC has a well-established rebate program to assist pensioners and families in need of special help, such as the aged and people on disability support and service pensions. These customers receive SWC services at less than full cost. The cost to SWC of the

rebate program is made transparent through the IPART processes and annual Statements of Corporate Intent negotiated with NSW Treasury. These rebates and similar concessions are paid to SWC as a CSO in accordance with the SPP. Similarly, the value of rebates provided by HWC to pensioners and exempt property holders (eg. schools, churches, nursing homes) are fully costed and funded by the Government through the SPP.

6.3.27 In relation to NMUs, under the Local Government Act 1993, local councils are required to reduce water supply and sewerage charges for eligible pensioners by 50%, up to a maximum reduction of $87.50 per annum for each service. Of this rebate, councils are reimbursed for 50% of each service via a payment from the Department of Local Government.

6.3.28 CSO payments are currently not provided to State Water. In the irrigation sector, payments are provided from the State Budget to rectify backlog maintenance (as agreed between the Government and the respective privatised and corporatism irrigators) and to assist with the implementation of Land and Water Management Plans.

6.3.29 The ongoing process of reform within the New South Wales water industry, particularly the rural sector, is expected to further enhance the transparency of current funding arrangements and the separation of commercial and non-commercial activities.

6.4 Pricing: Urban Water Services

Framework Requirements

6.4.1 In relation to pricing, the Council agreed:

(b) urban water services -

(i) to the adoption by no later than 1998 of charging arrangements for water services comprising an access or connection component or components to reflect usage where this is cost effective,

(ii) that in order to assist jurisdictions to adopt the aforementioned pricing arrangement, an expert group, on which all jurisdictions are to be represented, report to COAG at its first meeting in 1995 on asset valuation methods and cost-recovery definitions, and

(iii) that supplying organisations, where they are publicly owned, aim to earn a real rate of return on the written-down replacement cost of their assets, commensurate with the equity arrangement of their public ownership.

NSW Interpretation

6.4.2 New South Wales does not support the proposition that water agencies should earn a predetermined rate of return on the full quantum of asset valued on a replacement cost basis. New South Wales has developed a 'line in the sand' approach to the valuation of existing assets for pricing purposes. This is an economic approach based on the future net cash inflows and is therefore consistent with aspects of the deprival value methodology supported by the Expert Group. This approach recognises that past investment decisions were made for a variety of reasons and in many instances were not economically based; for example, the desire to encourage regional development and to compensate and resettle returned servicemen.

NCC Third Tranche Assessment Criteria

- Complete assessments of the cost effectiveness of two-part tariffs for service providers with greater than 1000 connections. Provide copies of any reviews which show that implementation is not cost effective, particularly where this involves large service providers.
- Where assessments show two-part tariffs to be cost effective, commitment to timely implementation. A strong net public benefit justification to be provided where implementation is to be phased beyond 2001.
- Metropolitan waste water charges to reflect the level of services received (volume and pollutant load) where practicable (for example, through effective trade waste charges).
- Free water allowances to be removed.
- Where low level free water allowances are retained or are to be phased out over time, jurisdictions to provide evidence that a significant proportion of customers and water supplied still face a strong volumetric signal.
- Where charges are based on property values, ensure that they do not undermine the principle of consumption-based pricing.

NSW Report

Charging Arrangements Comprising Access and Usage Components

6.4.3 SWC and HWC have introduced water usage charges as part of two-part tariff pricing structures determined by IPART. In the case of SWC, water usage revenue as a proportion of total water revenue has increased from 21% in 1989 to 80% in 2000. Usage charges are projected to make up around 91% of HWC's water revenue over the current price path from 2000 to 2003.

6.4.4 Gosford and Wyong Councils' water and sewerage businesses also adopt two-part tariffs set by IPART. IPART removed the prepaid water allowance from both local councils in the 2000 pricing

reviews. This will move the usage charge closer to the marginal cost of supply.

6.4.5 Local council NMUs have been moving to two-part tariffs since the 1980s. Fifty six of the 112 councils responsible for water supply in NSW now have a 'pay for use' tariff. At the time of the second tranche assessment, an analysis of councils that had not adopted the Independent Pricing and Regulatory Tribunal (IPART)'s recommendation of a two-part tariff based on a fixed access charge and a consumption charge showed that there were seven councils with water business undertakings greater than $2M per year, 14 councils with business undertaking between $1M and $2M per year, and 30 with water businesses valued at less than $1M per year.

6.4.6 New South Wales proposed to proceed to negotiate on a case by case basis with those councils with businesses worth greater than $1M per year which had made little or no progress towards an appropriate tariff structure. For those below $1M, it was not considered to be cost-effective to introduce two-part tariffs.

6.4.7 The Department of Local Government wrote to all councils with businesses worth greater than $1M per year in early 2000, advising them that they were required to implement national water reform and competition policy reform policies, including usage-based pricing and elimination of subsidies. Since then, three of the largest councils have resolved to adopt full usage pricing, one is reviewing its position and three have indicated that they are unwilling to do so.

Of the 14 medium-sized councils, four have moved to introduce pricing reform. Three of the small councils have also resolved to introduce full usage pricing.

6.4.8 Property based charges remain for minor stormwater drainage charges by HWC to non-residential customers. As part of its 2000 price determination, IPART introduced a phased reduction of the property value component of HWC's stormwater charges. Property based charges remain at a reduced level for SWC's commercial and industrial customers (estimated to be reduced to $12 million for SWC in 2003).

Asset Valuation and Cost Recovery Definitions

6.4.9 New South Wales's position in relation to asset valuation and the definition of full economic cost recovery is described above in the general pricing principles section.

6.4.10 The MU corporations and Gosford/ Wyong aim to recover their full economic costs through their pricing submissions to IPART. In addition, as outlined above, HWC and SWC also receive Government funding for specified CSOs.

6.4.11 In determining prices for these organisations, IPART takes into account appropriate rates of return as well as the range of other factors specified in the IPART Act.

Real Rates of Return on the Replacement Cost of Assets

6.4.12 As detailed above, New South Wales does not support the valuation of pre-existing assets on a replacement cost basis. Appropriate rates of return for NSW water businesses are determined on the basis of the LIS approach towards asset valuation and the individual businesses' weighted average costs of capital.

6.4.13 Nevertheless SWC, HWC and Gosford Council and Wyong Council all achieve a positive rate of return on the written down replacement cost of their assets.

6.4.14 The NMU sector also achieves positive rates of return on the replacement cost of assets.

6.5 Pricing: Metropolitan Bulk Water

Framework Requirements

6.5.1 In relation to pricing, the Council agreed:

(c) metropolitan bulk water suppliers -

(i) to charging on a volumetric basis to recover all costs and earn a positive real rate of return on the written-down replacement cost of their assets.

NSW Interpretation

6.5.2 A volumetric basis of charging has been taken to include not only charging for all water solely on a volumetric basis but also as an appropriately structured two-tiered tariff arrangement.

NSW Report

6.5.3 Bulk water is sold by SCA to SWC and various local councils for the purposes of re-supply. The maximum price for bulk water is set by IPART on a volumetric basis to reflect the full value of the water provided. HWC provides bulk water to Dungog Council and Great Lakes Council (for part of Karuah) under a contract with a two-part tariff. The charges incorporated in these contracts are determined by IPART. For both SCA and HWC, pricing provides for a positive real rate of return on bulk water assets.

6.6 Pricing: Rural Water Supply

Framework Requirements

6.6.1 In relation to pricing, the Council agreed:

(d) rural water supply -

(i) that where charges do not currently fully cover the costs of supplying water to users, agree that charges and costs be progressively reviewed so that no later than 2001 they comply with the principle of full-cost recovery with any subsidies made transparent consistent with 3(a)(ii) above,

(ii) to achieve positive real rates of return on written-down replacement costs of assets in rural water supply by 2001, wherever practicable,

(iii) that future investment in new schemes or extensions to existing schemes be undertaken only after appraisal indicates it is economically viable and ecologically sustainable,

(iv) where trading in water could occur across State borders, that pricing and asset valuation arrangements be consistent,

(v) where it is not currently the case, to the setting aside of funds for future asset refurbishment and/ or upgrading of government-supplied water infrastructure, and

(vi) in the case of the Murray-Darling Basin Commission, to the Murray-Darling Basin Ministerial Council putting in place arrangements so that out of charges for water, funds for the future maintenance, refurbishment and/ or upgrading of the headworks and other structures under the Commission's control be provided.

NSW Interpretation

6.6.2 The costs of rural bulk water include the total of operations and maintenance expenses, administration costs, externalities and attributable resource management costs, and asset costs. Asset costs include economic depreciation (ie the amount of capital consumed in service production) and the opportunity costs of capital (assumed to be the weighted average costs of capital).

6.6.3 Some of DLWC's river regulation and resource management activities generate joint benefits for water users, floodplain residents, recreational interests and certain rural landholders. New South Wales has interpreted full cost recovery as requiring the costs of these activities to be paid for by those who are responsible for causing, or benefit from, those services. It is difficult to be precise about cost-sharing and judgement is required. Those who cause

more services to be required, or benefit more, should pay more. State Water can only charge licensed water users and the assumption is that the NSW Government contributes a share of these costs on behalf of other (non-chargeable) beneficiaries.

6.6.4 It is necessary to ensure that water users contribute appropriate funds towards asset refurbishment and/ or the upgrading of water infrastructure.

6.6.5 For States where cross border trading could occur, it is important that water be priced in line with the principles of full cost recovery, including the associated resource management costs. A uniform approach of this nature will facilitate the market for water trading and ensure that water moves to its highest valued use.

6.6.6 New South Wales is of the view that the COAG agreement requires all signatories to price according to full-cost recovery principles by the year 2001 and to include resource management costs in the costs to be recovered.

NCC Third Tranche Assessment Criteria

- Provide information on the degree to which each aspect of the COAG guidelines has been met. Include among other things, information on methodologies for assets valuation and provision for asset consumption, information on the treatment of taxes and tax-equivalent regimes (TERs), externalities, dividends and return on capital. Information on water and wastewater services should be provided separately.
- For vertically integrated providers, processes should be in place to establish the contribution to total cost of major functional areas such as headworks, bulk water, reticulation and retail services.
- <u>For rural water pricing:</u>
  - full cost recovery;
  - a price path to achieve full cost recovery beyond 2001, with transitional CSOs made transparent; or for schemes where full cost recovery is unlikely to be achieved in the long term, CSO required to support the scheme made transparent; and cross-subsidies transparent;
  - a substantial proportion of schemes to be recovering at least the lower band of the agreed guidelines;
  - wherever practicable, schemes to earn a positive rate of return on assets;
  - rural service providers to establish an annuity for upgrading or refurbishing water supply infrastructure or adopt other approaches, where consistent with the objectives of this aspect of the COAG Framework;

- a sound public benefit justification for those schemes that are unlikely to attain the lower bound even in the long run, and the number and materiality of these schemes to be small; and
- regulators to take into account externalities in the setting of prices (eg a proxy for environmental externalities as the costs to water agencies of mitigating environmental problems).

- Assessment processes to provide for appropriate independence and public consultation and scrutiny;
- Arrangements to be sufficiently flexible to match the depth of analysis with the size and significance of the project;
- For large developments in particular, assessments to be based on the best information available with any assumptions and limitations clearly stated;
- All relevant economic, social and environmental costs and benefits to be factored into the analysis. For large developments, a robust cost benefit analysis to be provided;
- For assessments of ecological sustainability, information provided on the nature of the assessment, the decision-making processes and mechanisms to monitor the impacts of the development and its compliance with environmental standards.

NSW Report

Compliance with Full Cost Recovery and Transparency of Subsidies for Rural Bulk Water

6.6.7 In September 1995, rural bulk water pricing was referred to IPART. Since 1995, IPART has undertaken inquiries into bulk water pricing and set annual prices. It is expected that IPART will review charges again in 2001.

6.6.8 DLWC is required to make a submission to IPART indicating its anticipated costs for rural bulk water for each coming year. The DLWC submissions are set out in detail to indicate the costs by:

- source (regulated, unregulated and groundwater);
- region or valley; and
- cost type (operation, regulation, resource management and assets).

6.6.9 In terms of transparency, the extent of subsidies is indicated by a comparison of charges with full cost recovery, which is available in IPART's report of September 2000 detailing the current determination. The level of subsidy was assessed on a valley-by-valley basis. Rural water charges in New South Wales vary by source (regulated, unregulated and groundwater) and by valley.

Two-tiered tariffs are being implemented which are regionally (or valley) based and also vary by source.

6.6.10 In 1995-96, the NSW Government introduced an interim resource management charge (for regulated rivers and groundwater users) in a move towards achieving full cost recovery.

6.6.11 The 1996-97 rural water charges were held at 1995-96 levels, which included the resource management charge. Charges for unregulated streams were introduced for the first time.

6.6.12 The 1997-98 rural water charges were increased by around 10% on average, based on IPART's price determination. The level of price increase varied from valley to valley between 0% and 20%.

6.6.13 The 1998 price determination by IPART set rural water charges for a two year period to June 2000. The determination established a target of full cost recovery by region, based on best available information. Price increases were limited to 20% in any one year for the same amount of water usage. The difference between industrial and other water use prices was eliminated. Where water is metered, a price structure based on the relationship between final and variable cost was established. Where relevant, the determination also established:

- a clear statement of the remaining cost gap to achieve full cost recovery and
- broad equivalence with prices in other states.

6.6.14 The 2000-01 determination will result in an average increase in bulk water prices of 8% across all water sources. Prices in each valley were increased by between 1% and the maximum of 20% depending on whether full cost recovery had already been reached. Since 1997-98, cost recovery has increased from an estimated 55% to 82% in 2000-01. Full cost recovery has already been achieved (based on IPART's estimates of efficient costs) in a number of valleys, including Macquarie and Murrumbidgee regulated rivers, Barwon, Murray and Hunter unregulated rivers, and Central West, Murrumbidgee and Murray groundwater systems.

6.6.15 In its 2000-01 determination, IPART noted that since its last determination DLWC had created the commercial water business State Water, and had made progress in implementing its recommendations. In April 2001, DLWC lodged a comprehensive medium-term submission with IPART that meets the information requirements of IPART, and proposes implementation of the remaining bulk water pricing reforms.

Positive Real Rate of Return on Assets

6.6.16 As indicated in the discussion of urban water services, New South Wales and SCARM in general, have concerns with using written down replacement cost as a basis for charging a rate of return.

6.6.17 As a way forward, IPART does not allow for a rate of return on existing infrastructure. However, a rate of return on new infrastructure is allowed (where the infrastructure has been constructed on the basis that beneficiaries are willing to pay the full economic cost). This approach is expected to be followed by IPART in determining bulk order prices from July 2001.

Economic and Ecological Sustainability

6.6.18 In New South Wales, an economic appraisal is required as a prerequisite for government funding of capital projects above $0.5 million. This requirement applies to both new investments and capital works on existing structures. The economic appraisal must meet certain guidelines, which include:

- identifying various options for the capital investment (including 'do nothing');
- identifying all the benefits and costs associated with the options, both quantitative and qualitative;
- undertaking sensitivity analysis; and
- assessing the net benefits (including a rate of return).

6.6.19 There are currently rigorous policies in place under the *NSW Environmental Planning and Assessment Act 1979*, which include certain environmental impact assessments. The *Water Management Act* also helps to promote ecological sustainability.

Cross-border Trading

6.6.20 See the later section on water trading.

Setting Aside Funds for Future Asset Refurbishment

6.6.21 As indicated in (i) above, charges for rural water include contributions towards asset renewal and refurbishment of water infrastructure. In making its determination IPART includes an asset renewal annuity to ensure that the economic cost of maintaining and renewing assets are reflected in prices.

6.6.22 There is an issue of whether a specific reserve should be established within an authority's accounts. The optimal financial management of the State is likely to be enhanced by utilising all available funds to retire debt and reduce interest costs, rather than trying to attain a return on any quarantined balances. Authority reserves are inconsistent with this. In general, it is standard practice for governments, as owners of authorities, to strategically manage cash pools pending future decisions about major asset replacements and renewals.

6.6.23 DLWC proposes to IPART various valley-based asset renewal annuities to account for the consumption of service capacity of the

asset base in each valley. Positive rates of return on future infrastructure refurbishment investments that maintain current service levels have been included in DLWC's submission for a price path for 2001-04.

6.6.24 The refurbishment plans and a separate capital annuity to cover capital costs for environmental and safety compliance are based on a 30-year Total Asset Management Plan. A preliminary plan has been prepared through a rigorous process that has undergone an external quality audit.

Murray Darling Basin Commission Setting Aside Funds for Future Asset Refurbishment

6.6.25 Prices for 2001-2004 are expected to include the NSW share of MDBC operational and capital costs in line with other NSW bulk rural water services.

6.7 Pricing: Groundwater

Framework Requirements

6.7.1 In relation to pricing, the Council agreed:

(e) groundwater -

(i) that management arrangements relating to groundwater be considered by Agriculture and Resource Management Council of Australia and New Zealand (ARMCANZ) by early 1995 and advice from such considerations be provided to individual jurisdictions and the report be provided to COAG.

NSW Report

6.7.2 DLWC contributed to the ARMCANZ report. In August 1997, the NSW Government endorsed a State Groundwater Management Policy Framework document which took into account ARMCANZ recommendations. The first component policy on groundwater quality has been published and the groundwater quantity and groundwater-dependent ecosystems are currently being finalised.

6.7.3 IPART has current oversight of groundwater pricing, undertaken in a manner consistent with the other water sources.

6.7.4 The Water Management Act enhances provisions for the management of groundwater to give it the same protection as surface water and to integrate its management with that of other water sources. The Act makes no distinction between the management of groundwater and other water sources, apart from approval of activities that are unique to groundwater.

6.8 Water Allocations or Entitlements

Framework Requirements

6.8.1 in relation to water allocations or entitlements, the Council agreed:

(a) the State government members of the Council, would implement comprehensive systems of water allocations or entitlements backed by separation of water property rights from land title and clear specification of entitlements in terms of ownership, volume, reliability, transferability and, if appropriate, quality,

(b) where they have not already done so, States would give priority to formally determining allocations or entitlements to water, including allocations for the environment as a legitimate user of water,

(c) in allocating water to the environment, member governments would have regard to the work undertaken by ARMCANZ and Australian and New Zealand Environment and Conservation Council (ANZECC) in this area,

(d) that the environmental requirements, wherever possible, will be determined on the best scientific information available and have regard to the inter-temporal and inter-spatial water needs required to maintain the health and viability of river systems and groundwater basins. In cases where river systems have been over allocated, or are deemed to be stressed, arrangements will be instituted and substantial progress made by 1998 to provide a better balance in water resource use including appropriate allocations to the environment in order to enhance/ restore the health of river systems,

(e) in undertaking this work, jurisdictions would consider establishing environmental contingency allocations which provide a review of the allocations five years after they have been determined, and

(f) where significant future irrigation activity or dam construction is contemplated, appropriate assessments would be undertaken to, inter alia, allow natural resource managers to satisfy themselves that the environmental requirements of the river systems would be adequately met before any harvesting of the water resource occurs.

NCC Third Tranche Assessment Criteria

- The legislative and institutional framework to enable the determination of water entitlements and trading of entitlements to be in place.
- The framework to provide a better balance in water resource use, including appropriate allocations to the environment as a

legitimate user of water in order to enhance/ restore river health.

- Appropriate treatment of overland flows.
- Jurisdictions to have in place the necessary legislation, policy, administrative systems and institutional arrangements to implement comprehensive systems of entitlements backed by separation of property rights from land title and clear specification.
- Institutional arrangements to set the rights and responsibilities of the Crown, users and the environment.
- Institutional arrangements to provide for consultation, community involvement and public education.
- Institutional arrangements to provide a methodology for determining and reviewing a sustainable balance between competing uses (including the environment); and
- Institutional arrangements to deal with intra and interstate consistency where necessary.
- Property rights to strike an effective balance between water users' need for security and the environment's need for adaptive resource management.
- Water property rights regimes to maximise efficient water trade and investment subject to environmental needs.
- Water property rights to be well specified so as to promote efficient trade within the social, physical and ecological constraints of catchments;
- Property rights to be in demand, well specified in the long term sense, exclusive, enforceable and enforced, transferable and divisible and provide for sustainability and community needs.
- Ensure water users get the highest possible level of security in regard to the nature of the property right, and absolute security on the issue of ownership.
- While a 'lease in perpetuity' maximises security, it is not required to meet minimum COAG commitments.
- Compensation may be payable, for instance, where reductions in reliabilities and other relevant parameters are capricious or disproportionate.
- Efficacy of water property rights systems.
- Water rights to be linked to a robust adaptive resource planning system.

- Any constraints on water rights and trade to be based on a sound public benefit justification and implemented to minimise impacts on efficient trade.
- Environmental contingency allocations made, including the planning process (allocation, management, operation implementation, and use), monitoring and review mechanisms (the maximum timeframe allowed before review and identification of triggers prior to this time elapsing) after initial determination.
- A sustainable balance between the environment and other uses achieved, including formal water provisions for surface and groundwater consistent with the ARMCANZ and ANZECC national principles.
- Specified property rights, including the review of dormant rights.
- A Statewide process in setting environmental allocations. When issuing new entitlements, have provided for environmental allocations.
- Progress in implementing the endorsed allocation programs as published in the Council's second tranche assessment.
- Report on river systems (including stressed, and other over-allocated systems) identified in the second tranche on which New South Wales has fully delivered/ partially delivered/ not yet commenced allocations to the environment, as well as for river systems
- Report on the status of identified stressed rivers which were not addressed in a jurisdiction's endorsed 'roll-out' plan.
- Information on progress against implementation programs that demonstrates regard to the work of ARMCANZ and ANZECC principles.
- Show substantial progress in meeting the commitments with regard to stressed or over-allocated systems within the timelines provided in the implementation programs as published in the second tranche assessment.
- Progress to include allocations to the environment in all river systems which have been over-allocated, or are deemed to be stressed. Jurisdictional programs in this area must be substantially complete by 2005.
- Demonstrate progress in setting allocations that are adequate to meet the environmental requirements of water sources and dependent ecosystems.
- Demonstrate that there are adequate monitoring and review arrangements in place, such that allocations may be revised

should monitoring reveal current allocation arrangements are inadequate.

- Planning and implementation mechanisms substantially in place, such that allocations to the environment can be implemented as per a jurisdiction's timetable.
- Demonstrate both the capacity and intention to formally provide and use scientifically based environmental allocations for **all** water dependent ecosystems (as defined in the ARMCANZ and ANZECC principles), thus recognising the environment as a legitimate user of water.
- For all rivers and aquifers not presently declared over-allocated or hydrologically stressed, there be no impediment to developing a formal allocation for the environment if required.
- Evidence that jurisdictions have forward-looking mechanisms in place and operating effectively for adaptive natural resource management.
- Evidence of progress to ensure that allocations and trading will be substantially completed for all river systems and groundwater resources by 2005.
- Demonstrate that jurisdictions have not locked in allocations which, over time and in the light of better information, could be seen as being inadequate to meet environmental water requirements.
- Jurisdictions to have in place a clear pathway for review of allocations within the timeframe called for in the COAG Framework.

NSW Report

Implementing a Comprehensive Allocation Framework

Introduction

6.8.2 The *Water Management Act 2000* establishes a comprehensive allocation framework for water. It clearly and specifically allocates

- water to the environment as a first priority (see below);
- basic land holder needs as a priority; and
- clear, secure and transferable access entitlements for users.

Rights Established to Protect Landholders' Basic Needs

6.8.3 The new Act secures water for the basic needs of rural landholders. These fall into three categories:

- basic water rights for landholders for domestic and stock use (both surface water and groundwater);
- harvestable rights (a percentage of rainfall run off from land captured in a farm dam); and
- recognition of native title rights and interests if determined by a court, and these to have equivalent priority to other basic landholder rights.

6.8.4 These basic rights do not require an access licence.

6.8.5 Water can be extracted from a river or an aquifer without an access licence to meet basic domestic and stock water needs. If a dam or a bore is used, a work approval will be required.

6.8.6 In addition, landholders can capture water on their land by the construction of small farm dams without having to obtain an access licence. This is commonly known as the harvestable right and allows the capture of 10% of the average regional rainfall run-off.

6.8.7 Basic landholder rights are tied to the property and cannot be transferred or sold. During drought periods, basic landholder rights are to be afforded priority over other uses.

6.8.8 There are also provisions in the Act to allow these basic landholder rights to be limited in critical situations. These can include protecting the environment or overcoming a threat to public health.

6.8.9 The Act also recognises native title water rights. Native title holders will be entitled to water as per basic landholder rights for domestic and traditional purposes without an access licence. A native title holder is a person who holds native title rights as determined under the *Commonwealth Native Title Act 1993.*

An Improved Licensing and Trading System Providing Greater Flexibility and Opportunities for Water Users

6.8.10 Under the Act, all water users (excluding those taking water for basic landholder rights and native title rights) are required to be licensed. The Act makes major changes to the water licensing framework which will provide greater flexibility and opportunities for water users in New South Wales.

6.8.11 It is not expected that new licensing and approvals provisions will commence until mid to late 2002. This will allow time for the systems and processes to be established to convert the 130,000 or so existing water licences in NSW. For example, legal ownership of all current water licences has to be verified, and the licences split into their access (quantity or share) and use (approval) components. New application and renewal processes will be needed, plus a centralised system for management of the information, particularly the public register of all licences and approvals.

6.8.12 The Act provides specifically for access licences which are separate from a water user's approvals for their works or their use activities. Water access licences for private enterprises, such as irrigators (including irrigation corporations) and industries, will now be issued for 15 years providing a longer time frame in which to plan their business activities. Water utilities (eg Sydney or Hunter Water Corporation, local councils) will have 20-year licences.

6.8.13 Current licences will be rolled over for these new terms once the new licensing system is in place.

6.8.14 An access licence can be held by any person and it entitles its holder:

(a) to shares in the available water from a specified water source (the share component); and

(b) to take water at specified times, rates or circumstances, and in specified areas or locations (the extraction component).

6.8.15 The separation of the access licence from the use approvals will streamline the process for water trading as it is the access licence and its components that are the tradeable commodities. For most areas of New South Wales, new commercial water licences cannot be granted. The trading of water access licences will therefore be the major means by which new developers can obtain water, or existing developers can expand their production.

6.8.16 Separation of the access licence also gives the holder greater flexibility in individual financial arrangements. The water access licence can be managed like other business assets.

6.8.17 The Act provides greater powers for DLWC to ensure compliance with licence conditions. This is an important part of protecting the rights of all water users.

6.8.18 As part of their 20-year access licence, all local water utilities, like other licensed water users will be subject to a maximum volume which they can extract, although town supply (together with major utilities and domestic and stock licences) is accorded the highest priority of licensed use.

6.8.19 The volume per year in the local water utility licences will be set, based on one of the following:

- the existing volume allocation (many towns already have a volume entitlement specified on their works licence or in a legal agreement or contract);
- a volume of water calculated by reference to the demographic and geographic characteristics of the city or town, assuming reasonable demand management strategies are in place; and
- a volume of water calculated on the basis of the current yield of the water management works.

6.8.20 The access licences of local water utilities are to be reviewed every five years and varied according to changes in population and associated commercial activities (ie resulting from the increased population). Where a town is experiencing rapid growth, the utility can apply to the Minister for a review of its licence at any time.

6.8.21 Demand for water for new industries within the town can be met via:

- the defined licence volume;
- water efficiency gains;
- supplied out of the town's surplus - this will apply to industries connected to the town's reticulation providing the criteria for the town's water use approval are met; and
- the industry obtaining their own access licence through the normal process or by purchasing water from other users.

6.8.22 Any additional water sought for new or expanded industries within the town water supply system will not be provided through the population adjustment process. This will put industries within a town on a similar footing to industries outside of town systems.

6.8.23 Once local water utility licences are converted to a volume limit they will be able to trade any unneeded water on a temporary, one-year basis. Previously, local utilities could not trade water.

A 10-year Period of Security, with Compensation for Change, Providing Confidence for Business Development

6.8.24 Water to sustain water-reliant eco systems needs to be protected to ensure healthy, viable water resources in the future.
At the same time, to make business planning and investment decisions, water users need to know the possible future impacts on their water rights.

6.8.25 A balance between these two objectives is required. The NSW Government has adopted 10-year plans as a means of specifying this balance.

6.8.26 The water management committees have been asked to prepare draft water sharing plans for the high priority rivers and aquifers. By December 2001, the initial BAR determination for these systems must be made by the Government. The water sharing plans will be in effect for a 10-year period. Access licences are subject to any conditions imposed on them by the relevant plan.

6.8.27 Compensation is claimable by access licence holders if water allocations are reduced as a consequence of the variation of a bulk access regime during the term of a management plan, or where water licences are compulsorily acquired.

Determining Allocations or Entitlements to Water, Including Allocations for the Environment

Water Reforms

6.8.28 The NSW Government, in its August 1997 water reform package, agreed to implement the MDBMC cap on development of water resources in the Murray-Darling Basin, to limit total development to 1993-94 development levels. Each year New South Wales monitors its performance against cap in each regulated valley and the Barwon-Darling River. The 'cap' will be incorporated into the water sharing rules for the inland river systems including appropriate adjustment mechanisms if cap is being exceeded.

6.8.29 Interim water quality and river flow objectives for all rivers across NSW were set in 1998. The objectives for 31 catchments across New South Wales were approved by Government in October 1999 and released to water management committees. The Healthy Rivers Commission Inquiries into specific catchments is recommending longer term environmental objectives as the Inquiries progress.

Water Management Act 2000

6.8.30 The *Water Management Act* explicitly provides for water to be set aside for the environment as well as provisions to control land-based activities which can impact on the quantity and quality of water resources.

Water for the Environment as a Priority

6.8.31 A significant requirement of the new Act is that water for the fundamental health of the environment be protected as a priority in the sharing of water resources. Environmental protection is to be achieved through a number of mechanisms:

Water Management Principles

6.8.32 The Act sets out general water management principles and specific principles relating to water sharing, water use, drainage management, floodplain management, controlled activities and aquifer interference activities. The focus of these principles is ecological sustainability. The Act states that it is the duty of all persons exercising functions under the Act to take all reasonable steps to do so in accordance with, and so as to promote, these principles. This is a very powerful tool for ensuring accountability.

State Water Management Outcomes Plan

6.8.33 A State Water Management Outcomes Plan will set the over-arching policy context, targets and strategic outcomes for management of the State's waters, promote the water management principles of the Act and give effect to any government policy relating to salinity strategies. It must also be consistent with inter-governmental and international obligations, such as the Murray Darling Basin Agreement. A draft plan is expected to be released in July 2001.

Classification of Waters and Setting Initial Bulk Access Regimes

6.8.34 There is provision in the Act to classify water sources in terms of their degree of risk, stress or conservation value. These classifications will enable priorities to be set for action, including the development of water management plans.

6.8.35 The Act also requires that an initial 'bulk access regime' (BAR) be set by December 2001 for high risk, high stress or high conservation value water sources. The BAR is the water available for extraction after provision has been made for environmental water and basic landholder rights. Classification of water sources for the purposes of setting the initial BAR has been completed. The Minister, on advice of water management committees, will be setting the initial BARs, via a Minister's water sharing plan. These plans will have effect for 10 years, and are subject to compensation provisions.

Classes of Environmental Water

6.8.36 There are three classes of environmental water recognised for the purposes of the Act. They are:

- *environmental health water* for fundamental ecosystem health at all times;
- *supplementary environmental water*, to be used for specific environmental purposes at specific times but which may be used for non-environmental purposes outside of these times; and

- *adaptive environmental water,* that is subject to an access licence but is used for environmental purposes.

6.8.37 Rules for the identification, establishment and maintenance of the different environmental classes for all water sources in the State are required to be established in water sharing plans as soon as practicable, beginning with the priority systems for which BARs are to be set this year.

Environmental Protection Provisions

6.8.38 The Act provides much clearer arrangements for controlling land-based activities that affect the quality or quantity of our water resources. It provides for four types of approvals:

1. Water use approvals authorise the use of water at a specified location for a particular purpose and may be issued for up to 10 years.
2. Water management work approvals authorise the construction and use of works for water supply, drainage or flood management and may be issued for up to 20 years.
3. Controlled activity approvals authorise the holder to carry out a controlled activity in, on or under waterfront land. 'Controlled activity' refers to a building, a work, landfill, removal of material, etc. Controlled activity approvals may be issued for up to three years.
4. Aquifer interference activity approvals authorise the holder to conduct activities that affect an aquifer. This approval is for activities that intersect groundwater, other than water supply bores. These approvals may be issued for up to 10 years.

6.8.39 For controlled activities and aquifer interference activities, the Act requires that the activities avoid or minimise their impact on the water resource and land degradation and, where possible, the land must be rehabilitated.

6.8.40 To simplify the process, the range of approvals needed for a particular activity or development will be able to be obtained through a single application.

6.8.41 In addition to the water approvals process, a water management plan may contain environmental protection provisions that:

(a) identify zones in which identified development should be controlled;

(b) identify provisions to which State agencies and local authorities (including local councils) should be subject when taking action;

(c) identify development that requires the Minister's concurrence to the granting of development consent; and

(d) require the establishment of action plans to minimise or alleviate any harm caused to water resources by the continuance of existing uses.

6.8.42 These environmental protection provisions are to be included in a regional environmental plan to be made within six months (after the water management plan) by the Minister for Urban Affairs Planning.

Regard to the Work of ARMCANZ and ANZECC

6.8.43 In allocating water to the environment, New South Wales is taking into account the work undertaken by ARMCANZ and Australian and New Zealand Environment and Conservation Council (ANZECC).

Appropriate Allocations

6.8.44 Water management in New South Wales is based on an adaptive management approach which retains sufficient flexibility to incorporate new information (scientific, social and economic) and appropriate assessment over time. Although plans will be for 10 year periods there are requirements for mid term audit and review. A program of monitoring of environmental responses is under way in the regulated rivers and will be established for the unregulated river and groundwater systems.

Contingency Allocations and Review

6.8.45 New South Wales does not have 'environmental categories' as such. The *Water Management Act* provides a more clear and robust framework to provide different types of water for the environment and to give these statutory force within water management plans. Plans are of ten years' duration with review and audit provisions.

Assessments Prior to Development

6.8.46 The water management plans will provide an integrated process for assessing and reviewing environmental requirements both for existing and for new developments. Conditions for licences and approvals will be linked to the water management plans. Where water management plans contain provisions for environmental protection, these must be considered by statutory land use plans and decisions made under the EP&A Act, and incorporated into regional statutory land use plans.

6.9 Water Trading

Framework Requirements

6.9.1 In relation to trading in water allocations or entitlements, the Council agreed:

(a) that water be used to maximise its contribution to national income and welfare, within the social, physical and ecological constraints of catchments,

(b) where it is not already the case, that trading arrangements in water allocations entitlements be instituted once the entitlement arrangements have been settled. This should occur no later than

1998,

(c) where cross-border trading is possible, that the trading arrangements be consistent and facilitate cross-border sales where this is socially, physically and ecologically sustainable, and

(d) that individual jurisdictions would develop, where they do not already exist, the necessary institutional arrangements, from a natural resource management perspective, to facilitate trade in water, with the proviso that in the Murray-Darling Basin the Murray-Darling Basin Commission be satisfied as to the sustainability of proposed trading transactions.

NSW Interpretation

6.9.2 New South Wales has long recognised the need to develop efficient and effective water licence transfer arrangements to provide users with flexibility in managing their water requirements in systems where water has been fully allocated. Government has provided this flexibility by allowing licence holders to trade their licence with other individuals, within some broad parameters (ie nature of the licensed allocation) and rules (physical, social and environmental constraints). In doing so, it has recognised the dual benefit of using market mechanisms to effect transfers, providing flexibility in ownership and an incentive for water to be used in its most productive applications. It is the New South Wales Government's stated position that market mechanisms for water licence transfers will be extended wherever feasible, within physical, social and environmental constraints.

NCC Third Tranche Assessment Criteria

- Provide information on developments since the second tranche assessment, including current trading rules and the legislative and institutional arrangements, as well as the value, volume, location and nature (for example, permanent versus temporary trades, transfers from lower to higher value uses) of inter and intrastate trades.

- Where cross-border trade is possible, trading arrangements must be consistent between jurisdictions and facilitate trade.

- Where trading across State borders can occur, relevant jurisdictions must review pricing and asset valuation policies to determine whether there is any substantial distortion to interstate trade.

- Jurisdictions should develop proposals for further extending interstate trade in water, given the framework requirement for cross-border trade to be as widespread as possible (for example, the second tranche assessment calls for interstate trade between

New South Wales and Queensland and the ACT and New South Wales).

- Demonstrate that where restrictions remain, the benefits of the restriction outweigh the costs (for example, show that mechanisms in place for water are not ecologically unsustainable).

NSW Report

The Water Management Act

6.9.3 The *Water Management Act 2000* provides for significant improvements in relation to setting new regulatory framework for water trading via

- separation of water and land - access rights can be held independently of any requirement to own land;
- improved levels of certainty about water users' rights of access to and use of water;
- management of water access rights and use approvals through a planning framework leading to greater levels of certainty and efficiency in decision-making processes;
- providing specifically for Inter-State water trading;
- development of State-wide water transfer principles to guide management of water trading in a consistent and equitable manner; and
- provision for access rights and use approvals registers to better protect third party interests (mainly financial) in rights, and to provide better information for water markets.

6.9.4 Relevant provisions of the *Water Management Act* are not likely to become operational before 2002 pending development of regulations, new business rules, computer systems etc. In the meantime the licensing provisions of the *Water Act 1912* remain in operation.

Regulated Rivers

6.9.5 New South Wales has a long history of both temporary and permanent trading of regulated surface water allocations and entitlements respectively. Division 4C of Part 2 of the *NSW Water Act 1912* provides for both temporary and permanent trading within individual valleys. Temporary transfers were introduced in 1983, while permanent transfers were introduced in 1989.

6.9.6 Significant levels of temporary interstate trading (NSW/ Victoria) have continued. Trials of interstate permanent trading (the MDBC

pilot project) and temporary intra-State inter-valley trading have continued.

Unregulated Rivers

6.9.7 The conversion of unregulated licences from an area base to a volume base will facilitate trading activity. Almost all (around 10,000) irrigation licences, have been converted. About 1,500 (mostly industrial purpose licences) remain to be converted.

6.9.8 Revised interim guidelines for permanent trading in unregulated rivers have been introduced. Not a great number of trades have taken place to date, but the number of trades is expected to increase significantly in the short term. Temporary trading is not yet permitted, but rules are expected to be developed within twelve months.

Groundwater

6.9.9 Interim guidelines have been issued for trading in groundwater. To date there has been minimal trade in groundwater.

Towns

6.9.10 The *Water Management Act* makes provision for towns to enter temporary markets - one year only trades permitted. This will be implemented once the process of converting town water licences to a volume base is completed.

Interstate Trading

6.9.11 New South Wales is committed to the work program for the MDBC pilot project which should result in

- permanent inter-State trading being expanded up the Murray River to Hume Dam, Murrumbidgee and Lower Darling Rivers; and
- general security water being able to be traded permanently inter-State.

6.9.12 Issues such as the establishment of exchange rates and greater consistency in assessing environmental impacts are being addressed to provide for the implementation of both permanent and temporary inter-valley transfers within New South Wales.

6.9.13 New South Wales does not consider that there are any pricing or asset valuation issues providing impediments or distortions to current inter-State trade arrangement.

6.9.14 In relation to trading between New South Wales and Queensland, there are currently no formal arrangements for trading of water

across the border. There has however been general agreement between relevant New South Wales and Queensland agencies that trading will be introduced once joint environmental water management rules have been agreed and Queensland has established a diversion Cap for its water licence holders.

6.9.15 It is expected that a formal agreement covering trading, as well as environmental water management and diversion caps will be adopted by mid 2001. This will allow both states to make provision for cross border movements of water through their respective water management plans. It would be inappropriate for trading to be introduced beforehand.

6.9.16 With reference to trading between New South Wales and the ACT, at this stage ACT has not signed up to the MDBC cap. Until this occurs trading between New South Wales and the ACT cannot be introduced.

Trading Restrictions

6.9.17 With one exception, restrictions on trade in New South Wales are in place to deal with water delivery issues, environmental issues and/ or potential adverse impacts on other authorised water users.

6.9.18 The exception relates to the water trading policies of the Irrigation Corporations (eg Murray Irrigation). The Corporations do not permit permanent trading out of their areas, and DLWC has no powers to require them to change this situation. The reasoning behind this restriction is to preserve the 'rate base' for maintenance of internal water distribution networks.

6.9.19 The Department is to explore options with the Irrigation Corporations to address this issue. One option that has been identified already is the establishment of exit fees to contribute equitably towards long term infrastructure maintenance costs.

6.10 Institutional Reform

Framework Requirements

6.10.1 In relation to institutional reform, the Council agreed:

(a) that where they have not already done so, governments would develop administrative arrangements and decision-making processes to ensure an integrated approach to natural resource management,

(b) to the adoption, where this is not already practised, of an integrated catchment management approach to water resource management and set in place arrangements to consult with the representatives of local government and the wider community in individual catchment,

(c) to the principle that, as far as possible, the roles of water resource management, standard setting and regulatory enforcement and service provision be separated institutionally,

(d) that this occur, where appropriate, as soon as practicable, but certainly no later than 1998,

(e) the need for water services to be delivered as efficiently as possible and that ARMCANZ, in conjunction with the Steering Committee on National Performance Monitoring of Government Trading Enterprises, further develop its comparisons of inter-agency performance, with service providers seeking to achieve international best practice,

(f) that the arrangements in respect of service delivery organisations in metropolitan areas in particular should have a commercial focus, and whether achieved by contracting-out, corporatism entities or privatised bodies this be a matter for each jurisdiction to determine in the light of its own circumstances, and

(g) to the principle that constituents be given a greater degree of responsibility in the management of irrigation areas, for example, through operational responsibility being devolved to local bodies, subject to appropriate regulatory frameworks being established.

NCC Third Tranche Assessment Criteria

- Separate service provision from regulation, water resource management and standard setting. Demonstrate adequate separation of roles to minimise conflicts of interest.
- If the regulator and service provider are responsible to the same Minister, provide information about the manner in which the resulting potential conflict of interest has been effectively addressed.
- Active participation in national processes for inter-agency comparisons and benchmarking.
- Appropriate structural and administrative responses to the CPA obligations, covering legislation review, competitive neutrality and structural reform.
- All impediments to devolution to be removed and local management arrangements identified in the second tranche assessment to be implemented.
- Decisions to be made in regard to whether devolution of irrigation scheme management takes place and, if so, advice on when this will occur.
- Where reform has been undertaken, evidence to be provided demonstrating that an appropriate regulatory framework has been put in place.

- Demonstrated administrative arrangements and decision-making processes to ensure an integrated approach to natural resource management and integrated catchment management.
- An integrated catchment management approach to water resource management including consultation with local government and the wider community in individual catchments.
- Address such areas as government agency coordination, community involvement, coordinated natural resource planning, legislation framework, information and monitoring systems, linkages to urban and development planning, support to natural resource management programs and landcare practices contributing to protection of rivers of high environmental value.
- Demonstrate that the catchment management planning process is free from domination by narrow sectoral interests to ensure decisions reflect the balance of interests within the wider community.
- Genuine stakeholder participation in catchment planning, including agreement to the principles underpinning the plan such as cost sharing arrangements, acceptable basin impacts, and allowable trade-offs amongst water users.
- Appropriate institutional arrangements should ideally have a statutory underpinning.
- The overall coordinating body including its composition and functions relating to natural resource management and links to regional/ local government bodies.
- The process whereby catchment management bodies (trusts, committees, councils, or groups) are formed including how the local community, local government, and State agencies are involved.
- The statutory basis of catchment management plans/ strategies and capacity and mechanisms to enforce actions identified in the plan.
- The framework used to assist catchment managers to evaluate/ review the effectiveness of a catchment management process.
- A description of landcare practices (including extent of coverage) that protect areas of river which have a high environmental value.

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Integrated Management

6.10.2 In December 1997, water legislation was amended to adopt ESD principles, make provision to license SWC and HWC, update provisions for groundwater management to introduce comparability with surface water management, and facilitate interstate water transfers.

6.10.3 The August 1997 water reforms were developed cooperatively by five agencies involved in natural resource management. This whole-of -government approach will continue to be the basis for implementation of water reforms in New South Wales.

6.10.4 The NSW water reforms are structured to facilitate regional-focused management based on Statewide principles. This allows for the recognition of regional differences in terms of resource condition and the industries and communities dependent upon resources, while ensuring consistency in the approach taken.

6.10.5 In December 2000, after extensive public consultation, the *Water Management Act 2000* was passed which for the first time provides for integrated and consolidated water legislation for New South Wales, covering all water sources of the State.

Integrated Catchment Approach

6.10.6 Total catchment management (TCM) was endorsed as NSW Government policy in 1987. A framework for its operation was put in place under the Catchment Management Act in 1989. On 31 May 2000, following a major review of TCM that made recommendations for improving the existing program and strengthening partnerships between government and community, New South Wales established 18 new catchment management boards to replace 43 of the existing catchment management committees. The first task of the new boards will be to identify major natural resource issues and options for action which aim to achieve specific natural resource targets designed to achieve sustainable outcomes.

6.10.7 Water management committees are in place to oversee the implementation of interim water flow and quality objectives and prepare draft water management plans.

6.10.8 In the south of the State, Land and Water Management Plans are now are being implemented through a community and government partnership arrangement. These are large sub-catchment action plans to help overcome natural resources degradation and provide for longer term sustainability of the rural industries in the area.

6.10.9 The terms of reference for the Healthy Rivers Commission include consideration of administrative and management issues to address catchment-wide natural resource degradation problems. SCA and NSW National Parks and Wildlife Service are developing plans of management for the 'special areas' for all water storage catchment areas in the Sydney/ Illawarra area.

6.10.10 DLWC has produced a draft policy and framework document on Integrated Urban Water Cycle Planning to complement the new Water Management Act. This is being used to encourage NMUs to make better use of all water resources including stormwater and effluent reuse. Several pilot studies have been carried out this year to demonstrate the effectiveness of this approach. A good example is the town of Finley, where the approach resulted in a reduction in capital expenditure from $3 million to $300,000.

6.10.11 As part of the water reforms, local councils are to prepare integrated water supply, stormwater and sewerage strategies. The EPA issued local councils with a direction under the Protection of the Environment Operations Act 1991 to prepare stormwater management plans for urban areas for townships with populations greater than 1000 people by mid 2001. A Stormwater Management Trust has been established to provide funding to local councils for on-ground works.

Demonstrate Separation of Roles

6.10.12 Separation of operating and regulating roles has occurred to some degree in all the water sectors.

6.10.13 In the MU sector, both SWC and HWC are corporatised and regulatory regimes have been established. In 2000, IPART's role was extended so that it became utility regulator as well as price regulator. As a result IPART has taken over the role of regulating SWC and HWC's operating licences, and is the regulator of SCA's operating licence. IPART is currently reviewing SWC's system performance and customer service standards. It also finalised the annual licence audits of both SWC and HWC in 2000. IPART will establish a new operating licence for HWC later in 2001 to take effect from 1 July 2002.

6.10.14 The Sydney Catchment Authority is a statutory body that formally came into operation in July 1999. It supplies bulk water to Sydney Water Corporation and some local government areas outside Sydney. Its responsibilities are:

- managing and protecting the catchment areas and catchment infrastructure works;
- protecting and enhancing the quality of water harvested in its catchments;
- undertaking research on catchments generally, and in particular on the health of its own catchments; and
- undertaking an educative role within the community on water management and pollution control.

6.10.15 In addition to service regulation through the operating licences and price regulation by IPART, the MUs are regulated by a suite of other regulatory instruments including MOUs with the EPA, DLWC and the Health Department; and licence control of waste water systems (both treatment and transport) by the EPA. Access to water is to be regulated by water management licences issued by DLWC. The first water management licence was issued to HWC in December 1998 and a public review of its initial operations was completed in June 1999.

6.10.16 For the NMUs, the provision of water supply and sewerage services by local councils are separated (financially ring-fenced) from the councils' planning and regulatory functions. All NSW local councils are required to separate their water service revenue and expenditure from general revenue and expenditure and are specifically restricted from allocating water service revenue for other purposes. Compliance is monitored by the local council's auditor.

6.10.17 Local government regulations have been amended so that provisions relating to the operation of council water utility services are located in a separate regulatory instrument from provisions relating to council regulation of plumbing and drainage on private land. Council land use planning and regulation of land development is carried out under a separate legislative framework with full procedural separation from council service functions. There is a right of judicial appeal in relation to all council regulatory functions.

6.10.18 In the rural sector, all government irrigation schemes have been privatised. Regulation is now explicitly applied by EPA (waste water and drainage controls through licences) and DLWC (access to water under a water management works licence). The companies and corporations are also required to comply with land and water management plans as a condition of their water management works licences.

6.10.19 On 1 September 1997 State Water was established to separate DLWC's water management function from bulk rural water supply services. State Water is an internally ring fenced group within DLWC. State Water is responsible for delivery of bulk water and management of water assets.

6.10.20 State Water is governed by instruments that cover three areas: authorisation to undertake the business, statement of corporate intent and authorisation to take and use water. Regulatory requirements are defined formally by other divisions of DLWC and in concert with the EPA in regard to river flow and water quality objectives.

Benchmarking/ARMCANZ Interagency Comparison

6.10.21 SWC and HWC are participating in national benchmarking and performance monitoring through ARMCANZ and Water Services Association of Australia (WSAA). Mechanisms include:

- performance comparisons for a wide range of operational performance indicators published in *WSAAfacts,* a compendium produced by WSAA each year;
- GTE performance Indicator reporting by the Steering Committee on National Performance Monitoring of GTEs; and
- NSW Treasury reporting on NSW Government businesses.

6.10.22 In addition, in 1997 SWC became the first non-United Kingdom water entity to participate in benchmarking with the UK water companies through the water regulator, the Office of Water Services (Ofwat). Ofwat publishes comparisons of indicators covering customer services, costs and financial performance. The companies

are assessed on each indicator. SWC plans to use the findings to identify where its business performance can be improved.

6.10.23 In the NMU sector, DLWC prepares an annual report on performance comparisons for country councils covering a wide range of performance indicators. DLWC provides IPART with a summary report on each local council's performance.

6.10.24 DLWC provides data from the 25 NSW water utilities with over 10,000 assessments for inclusion in the annual *Australian Non-Major Urban Water Utilities Performance Report*.

6.10.25 In regard to benchmarking, a joint pilot project on syndicate benchmarking involving groups of councils has identified significant cost savings. The Minister for Land and Water Conservation has released a report on the pilot project. This report includes guidelines for councils on syndicate benchmarking. DLWC is facilitating syndicate benchmarking by country councils.

6.10.26 Privatised irrigation companies currently must provide financial and management efficiency data for comparison purposes.

6.10.27 Efficiency gains already achieved in New South Wales are as follows:

- in the MU sector, structural reforms implemented by SWC have brought underlying operating costs per property down by 29% in real terms between 1992-93 and 1998-99. The current objective is a further reduction of 23% in real terms between 1998-99 and 2001-02. HWC achieved reductions in operating costs per property of more than 40% over the decade to 2000. For the next three years, it expects that this trend will slow due to many of the major efficiency gains having been achieved, and due to increasing costs as it achieves higher standards, particularly in wastewater services. For the period to 2003, HWC expects its real operating costs per property to be reduced by around 4.5% in total.
- in the NMU sector, operating costs have remained constant in real terms, but syndicate benchmarking is expected to lead to significant efficiency gains.
- State Water is to develop a program of efficiency gains for bulk rural water services.
- IPART requires demonstration of a program of cost efficiency before it considers price increases for any water sector that it regulates (ie. MU and bulk rural).
- the initiation of an efficiency reporting framework for rural water management.

Implement Measures such as Contracting Out, Corporatising Entities or Forms of Privatisation and Competition

6.10.28 All NSW water sectors are addressing the corporatisation/ privatisation and administrative requirements of the Competition Principles Agreement.

6.10.29 More than 80% of HWC's outlays are directly contested on the open market or rigorously benchmarked. The remaining small proportion is largely related to the costs of corporate and asset management and regulatory involvement, which are not readily contestable.

6.10.30 SWC has implemented a structural separation of activities into contestable and non-contestable. Contestable activities such as the construction of water filtration plants are subject to public tendering processes. Sydney Water has instituted internal ring-fencing arrangements for contestable service delivery. HWC has created a subsidiary company, Hunter Water Australia, which covers contestable areas such as engineering services, water treatment processes, laboratory services, and survey and land information.

6.10.31 IPART sought proposals from the MU sector in the 2000 price determination process for pricing reform to reflect the competition agenda. HWC proposed a departure from postage stamp pricing for large volume customers with a pricing structure linked to the infrastructure commanded by these customers. The new pricing structure provides for a location-based tariff applying to customers using more than 50,000 kilolitres per year and applies only to consumption in excess of 50,000 kilolitres. This approach is well suited to HWC because of its large industrial customer base and because these customers tend to be located in traditional industrial areas close to water sources - thereby having command over a relatively small amount of major delivery infrastructure. HWC's proposal was endorsed by IPART in the 2000 price determination and will apply from 1 July 2001.

6.10.32 SWC and HWC have commercial objectives under enabling legislation, including business efficiency. SWC's cost reduction objectives are 45% in real terms by 2000-01 compared with 1992-93.

6.10.33 For NMUs, competition reforms are to be implemented based on the NSW Government's 'Policy Statement on the Application of National Competition Policy to Local Government'. DLG has also prepared competition guidelines for local government entitled 'Pricing and Costing for Council Businesses: A Guide To Competitive Neutrality' and councils are required to prepare special purpose financial reports with tax equivalent regime (TER) payments with their annual financial statements. Councils also need to prepare financial plans to demonstrate the long term

financial sustainability of their water supply and sewerage businesses to comply with National Competition Policy.

6.10.34 DLWC has prepared a report and conducted a series of workshops on options for provision and management of water supply and sewerage infrastructure to assist local councils to identify and utilise the most appropriate option for their projects.

6.10.35 For rural water, State Water currently contracts out major asset maintenance and rehabilitation work in combination with internal service agreements with other parts of DLWC. The internal mechanisms will move towards cost-competitive tendering.

Greater Responsibility to Constituents

6.10.36 Water management committees will have significant responsibilities with regard to water management planning. The committees will be set up with clear terms of reference to undertake specific tasks. Water management plans can be prepared for water sharing, water use, environment protection, drainage and floodplain management. The plans once approved will be statutory plans for a 10 year period.

6.10.37 Private irrigation companies in New South Wales are fully accountable for all financial management and investment. However, there are separation arrangements where the Government has agreed to contribute to upgrade infrastructure to agreed standards under negotiated arrangements (maximum period 15 years).

6.10.38 With the corporatisation/ privatisation of all irrigation schemes, responsibility for capital structure and infrastructure refurbishment was devolved. Irrigation schemes have been managed under semi-autonomous financial and managerial accountability within DLWC since 1979 and therefore special disengagement arrangements were not necessary.

6.10.39 State Water's operations are valley-based. Costs and pricing are being developed on a valley basis. IPART is determining valley-based prices which reflect the full cost of water delivery and asset management.

6.11 Consultation and Public Education

Framework Requirements

6.11.1 In relation to consultation and public education, the Council agreed:

(a) to the principle of public consultation by government agencies and service deliverers where change and/ or new initiatives are contemplated involving water resources;

(b) that where public consultation processes are not already in train

in relation to recommendations (3)(b), (3)(d), (4) and (5) in particular, such processes will be embarked upon;

(c) that jurisdictions individually and jointly develop public education programs in relation to water use and the need for, and benefits from, reform;

(d) that responsible water agencies work with educational authorities to develop a more extensive range of resource materials on water resources for use in schools; and

(e) that water agencies should develop, individually and jointly, public education programs illustrating the cause and effect relationship between infrastructure performance, standards of service and related costs, with a view of promoting levels of service that represent the best value for money to the community.

NCC Third Tranche Assessment Criteria

- Jurisdictions must have consulted on the significant COAG reforms (especially water pricing and cost recovery for urban and rural services, water allocations and trade in water entitlements). The Council will examine the extent and the methods of public consultation, with particular regard to pricing, allocations and water trading.
- Education programs related to the need for and benefits of reform to be developed.
- Evidence of agencies developing public education programs that illustrate the need for reform, and general awareness of water related issues. This could include the relationship between infrastructure performance, standards of service and related costs. These programs should promote levels of service that represent the best value for money to the community.
- Evidence that responsible agencies are working with education authorities to develop a more extensive range of resource materials for use in schools.
- Information on measures used by jurisdictions to address the issue of potential conflict in the service provider being responsible for determining the level of ongoing public education on water conservation when it has a financial interest in increased water consumption.

NSW Report

Adoption of the Principle of Public Consultation

6.11.2 The NSW Government is committed to the principle of public consultation, as is demonstrated by the comprehensive approach outlined below.

Implementing Public Consultation Processes

6.11.3 Major forums for consultation for policy and plan making include:

- NSW Water Advisory Council (WAC) - a community and industry body, established in 1996 to advise the Minister for Land and Water Conservation on water issues.
- State working groups with agency and key stakeholder representatives, which have been closely involved in the development with DLWC of water reform policies, including the State Rivers and Estuaries Policy (1993), State Wetland Management Policy (1996), State Groundwater Policy (1997) and the *Water Management Act (1998-2000).*
- Catchment management boards with agency and key stakeholder groups which develop catchment management strategies at the catchment level.
- Stakeholder surveys.
- Water management committees have been established with a wide range of interests - including agency, water users, environmental and Aboriginal representatives - to participate in establishing environmental flow rules for each regulated valley and stressed unregulated rivers.

6.11.4 There has been a focus on identifying Aboriginal interests in policy and plan-making and Aboriginal representatives must be included on all boards and committees.

6.11.5 Extensive consultation with stakeholders occurred in the development of New South Wales' integrated water reform package, approved by Cabinet in August 1997. There was detailed consultation on individual elements such as water sharing proposals and associated licensing reforms, water access and use rights, bulk water administration, and river health objectives.

6.11.6 The review of NSW 's water legislation was a major exercise in 'Water Sharing in New South Wales – Access and Use'. It set out policy options for some 21 water sharing issues as a basis for the review of the existing legislation. More than 200 written responses were received and analysed and a summary report was publicly released.

6.11.7 This was followed in late 1999 with a White Paper, A Proposal for Updated and Consolidated Water Management Legislation for New South Wales. This had been developed in consultation with other key natural resources agencies and with peak community and industry interest groups, such as the NSW Farmers' Association, the NSW Irrigators' Council, the Nature Conservation Council, the

NSW Local Government and Shires Association and the NSW Aboriginal Land Council. More than ten thousand copies of the White Paper were distributed and meetings were held at 55 places, mainly in regional New South Wales. Eight hundred written submissions on the White Paper were also received and analysed.

6.11.8 The Water Management Bill was prepared and introduced into Parliament on 22 June 2000, with debate being deferred until Spring 2000 to allow time for further public consultation. Another round of consultation occurred, across government, with peak stakeholder groups and through extensive regional public meetings.

6.11.9 More than 340 written submissions were received from a wide range of water user groups, conservation groups and individuals, local councils and state and federal government agencies. Most of the written submissions on the White Paper and the Bill supported the need for new legislation, even though they did not agree on some of the detail.

6.11.10 State Water has established customer service committees to give customers a direct say in operational and asset management decisions on their rural bulk water delivery service.

6.11.11 For pricing reforms, considerable community input has been made through open public hearings, workshops, representations and written submissions to IPART. After the 1996 public hearings on bulk water, there were some 16 meetings held around the State with stakeholder groups.

6.11.12 The Healthy Rivers Commission, established in January 1996, conducts independent public inquiries into the health of selected rivers in New South Wales and consults through discussions with interest groups, public hearings and written submissions.

6.11.13 HWC and SWC have established mechanisms for public consultation, including customer councils, focus meetings and customer surveys. SWC surveys customers annually on a range of issues and publish the results of these surveys.

6.11.14 From 2001, HWC will replace its annual customer survey with 'perception' and 'satisfaction' surveys to be carried out in alternate years. HWC has found that, after conducting the annual survey since the late 1980s, year-on-year results now show very little annual change in community perceptions. For this reason, a perception survey will be carried out every second year to monitor changes in trends against the historical data. In the alternate years, a 'satisfaction' survey will be carried out among community members who have had recent direct contact with HWC. This survey will provide more detailed data on customer and community satisfaction levels with HWC's services.

6.11.15 Guidelines on community consultation have been provided to NMUs in regard to their water services. Appropriate community consultation is a pre-requisite for financial assistance for capital works projects.

6.11.16 In October 1997, the NSW Government released a discussion paper on Proposed Interim Environmental Objectives for NSW Waters, and undertook a comprehensive consultation exercise to develop the Interim Environmental Objectives. A series of workshops, coordinated by the EPA, were held across New South Wales between February and May 1998 to discuss the setting of water quality and river flow objectives. During the consultation period, 810 written submissions were received. In October 1999, the Minister for the Environment announced the release of the Interim Environmental Objectives for 31 NSW catchments.

Public Education Programs

6.11.17 New South Wales is currently undertaking major community education programs. It is envisaged that these will be further expanded. Specific NSW programs include:

- *Water reform and legislation* - an ongoing series of publications explaining the water reforms, progress to date and a series of documents leading to the final Bill for the *Water Management Act* were publicly released. A booklet explaining the *Water Management Act* has been widely distributed and more specific facts sheets will be distributed in April 2001. Stakeholders also regularly receive newsletters on key initiatives. This information is placed on the Internet.

- *Waterwatch* - involves over 450 schools, 80 community groups and 70 councils. Elements include *Murder Under the Microscope* 'eco-game'; the Spring and Autumn Water Bug Surveys; Frogwatch and the newly initiated Outback Streamwatch Program. Emphasis is on environmental auditing and related aspects of water quality, flow and environmental degradation within a catchment.

- *Waterwise* - promoting water conservation practices. Program elements include Waterwise in the Catchment, Urban Waterwise and Waterwise on the Farm. It focuses on local councils, irrigators and land owners.

- *RiverCare 2000 Accreditation and Awards* - a program acknowledging best practice in riparian management and rehabilitation, including water quality and water conservation practices, targeting all sectors of the community.

- *National Water Week* - annual event involving government agencies, non government groups and the broader community in a program of activities. In 2001 New South Wales will release information to support the six month consultation process for water quality and river flow objectives, including the release of 25 publications and a video.

- *Exploring the Nardoo* - a CD-ROM for secondary to tertiary students, explaining water and the environment, focusing on water management within a catchment.

- *Stormwater* - in 1994-95, New South Wales ran a mass public awareness campaign for stormwater pollution. The NSW Government's $4 million Urban Stormwater Education Program employs mass media, community and school education, vocational education and training and partnership projects with key sectors. Phase one of the project finished in June 1999 and established the theme 'The Drain is Just for Rain'.

The second phase of the program continues this theme through to June 2001.

- *Internet* - this has a large range of water-related information, including State of the Environment Report mapping, electronic versions of the Interim Water Quality and River Flow Objectives and information on the Stormwater Trust.
- *Formal curriculum resources* - have been developed and will continue over the next 3 years.
- *EPA Pollution Line* - this is a State-wide 1300 number that provides information on the water reform process, amongst other functions.

SWC and HWC also have advertising campaigns designed to attribute value to water and encourage conservation. Each regional office of SWC has an education officer who visits schools. SWC is developing a program for school students for inclusion in an internet web site, a CD-ROM, brochures and comprehensive school kits. HWC has a comprehensive school program involving Streamwatch support, HSC and K-6 syllabus resource material, water cycle tours, school visits, school environmental awards and 'waterwise' and 'education and environment' pages on its web site.

Resource Materials

6.11.18 Recognising that accurate information about the water reforms (their intent, timing and processes for change) is essential for individuals and industries to adapt to change, considerable effort has been put into the preparation of discussion documents, information sheets and workshops (as detailed above).

6.12 The Environment

Framework Requirements

6.12.1 In relation to the environment, the Council agreed:

(a) that ARMCANZ, ANZECC and the Ministerial Council for Planning, Housing and Local Government examine the management and ramifications of making greater use of wastewater in urban areas and strategies for handling stormwater, including its use, and report to the first Council of Australian Governments' meeting in 1995 on progress,

(b) to support ARMCANZ and ANZECC in their development of the National Water Quality Management Strategy, through the adoption of a package of market-based and regulatory measures including the establishment of appropriate water quality monitoring and catchment management policies and community consultation and awareness,

(c) to support consideration being given to establishment of landcare practices that protect areas of river which have a high environmental value or are sensitive for other reasons, and

(d) to request ARMCANZ and ANZECC, in their development of the National Water Quality Management Strategy, to undertake an early review of current approaches to town wastewater sewage disposal to sensitive environments, noting that action is underway to reduce accessions to water courses from key centres on the Darling River system (It was noted that the National Water Quality Management Strategy is yet to be finalised and endorsed by governments).

NSW Interpretation

6.12.2 A national framework document for improved wastewater reuse and stormwater management in Australia was produced by ARMCANZ and ANZECC in December 1996. It outlined the types of complementary measures linked to urban wastewater and stormwater within the whole life cycle of water.

6.12.3 This document also outlined the need to further evaluate the economics of the urban water life cycle. This would identify opportunities for cost-effectively improving the sustainable management of water resources, the health of inland and coastal waters and maintaining customer service and public health.

6.12.4 The key measures to be considered are:

- to include demand management to increase efficiency of resource use
- recycling of treated wastewater of secondary and potable quality
- better understanding of the environmental effects of returning wastewater and biosolids to the environment
- using existing environmental allocations in a more ecologically sensitive manner
- improving the quality of urban stormwater run off
- harvesting of stormwater
- water sensitive design in new urban developments
- analysing the economics to identify the most cost effective solutions to the environmental issues.

6.12.5 The development of market-based and regulatory measures which support the National Water Quality Management Strategy (NWQMS) includes:

- guidelines for assessing and protecting water quality
- setting water quality objectives
- water quality monitoring and auditing requirements
- using economic tools such as implementation of the polluter pays principle and load-based licensing within environmental protection licensing regimes
- conducting education programs, all of which reflect catchment management policies.

6.12.6 Community consultation and awareness is vital to the success of any economic and regulatory tools that aim to change community attitudes and behaviour for improved environmental outcomes.

6.12.7 Mechanisms for improved landcare practices that protect areas of river with sensitive or high environmental value encompass policies and programs for guiding land, soil, water and chemical use and vegetation management strategies primarily. Riparian, floodplain and wetland systems are vital elements in protecting high environmental values in rivers but are essentially subsets of the broader catchment management strategies which will integrate all landcare practices affecting the watercourse.

6.12.8 Town wastewater and sewage disposal into sensitive environments raises the issues of the assessment of effluent impacts on aquatic and terrestrial ecology, human health implications and contamination of associated systems. Trials are underway in various locations, including wetlands, streams, coastal lakes and floodplains, which will provide information to assist in the review of these practices.

NCC Third Tranche Assessment Criteria

- Demonstrate a high level of political commitment and a jurisdictional response to ongoing implementation of the principles contained in the NWQMS guidelines. Include the development of practical on-the-ground action. This may involve the use of legislation, policy instruments, programs or plans. These should contain provisions which are consistent with the guidelines and contain scope for review.
- A publicly stated commitment to implementing the principles identified in the Strategy. Implementation of an approach for adopting the scientific framework outlined in the Australian Water Quality Guidelines for Fresh and Marine Waters (ANZECC 1992).
- Adopt an appropriate statewide approach to water quality management.

- Have in place a water reform program that integrates water quality and quantity management requirements in its approach to land-use planning.
- In relation to water quality, a program to target the ambient environmental quality objectives set in consultation with the community.
- All relevant legislative, regulatory and policy measures to protect water quality should include measures to promote
  - integrated resource management;
  - identification of environmental values and associated water quality objectives; and
  - catchment, coastal and groundwater management planning.
- Demonstrate use of the relevant national guidelines.
- Where necessary, jurisdictions to produce local guidelines or codes of practice consistent with the national guidelines so far completed for those industries covered under the NWQMS.
- The strategy for achieving sustainable water quality management should build on a full mix of approaches including, but not limited to, regulatory and market based approaches, education and guidance.
- Market-based approaches to play a complementary role in achieving protection and enhancement of water quality, where appropriate.
- Where modules have been finalised, jurisdictions to finalise their approach and initiate market-based and regulatory activities and measures such as water quality monitoring, catchment management policies, town waste water and sewerage disposal and community consultation and awareness to give effect to the NWQMS.
- Jurisdictions to support ANZECC and ARMCANZ in the development of the remaining modules of the NWQMS.

NSW Report

Waste and Stormwater Management

6.12.9 New South Wales has been exploring and encouraging the greater use of wastewater since the early 1990s with a number of pilot projects such as Rouse Hill, Shoalhaven Heads, Albury Wodonga, and the Quaker's Hill Water Factory. A number of significant reuse projects have been established also in the lower Hunter. For example, all the treated effluent form HWC's Dora Creek treatment plant is reused by the nearby Eraring power station.

6.12.10 In country New South Wales, integrated urban water cycle planning (IUWCP) is encouraged in all water infrastructure projects and is a condition of the Country Towns Water Supply and Sewerage backlog subsidy program. In this planning process, councils must consider all water sources and uses and match these with the other users in their catchment. Stormwater is being used increasingly as a resource, while effluent reuse is undertaken by 47% of all NMUs and results in 14% by volume reuse across the State's NMUs. The new Water Management Act also allows effluent credits for future schemes, whereby NMU's can free up their water allocation for trading, by returning higher quality effluent to rivers.

6.12.11 In May 1997, NSW launched a major $3.01 billion package to fix urban waste water and stormwater problems, referred to as the Waterways Package, covering the Sydney, Blue Mountains, Hunter and Illawarra regions. A new sewage storage tunnel was also announced to minimise and capture wet weather sewerage overflows from the North of Sydney and prevent pollution of Sydney Harbour. A special Waterways Advisory Panel was also established to consider the proposed solutions and advise the Government on options and their effectiveness.

6.12.12 Technical and financial assistance is given to councils to develop integrated strategies for water supply, sewerage and stormwater management. These strategies are a pre-requisite for State Government financial assistance and need to comply with broad catchment planning and environmental objectives. DLWC has prepared a draft policy and framework document on integrated urban water cycle planning to assist councils to prepare integrated strategies on a catchment and total water cycle basis. There is a 5-year program for development of integrated WSD strategies by country councils.

6.12.13 In September 1997, the Government announced funding of over three years to tackle stormwater pollution throughout NSW. The funds have been administered through a Stormwater Trust to help implement high priority projects, assisting local councils to prepare and implement catchment-based stormwater management plans and for a stormwater education program. One of the key initiatives is the development of partnerships between local councils and the private sector to implement innovative, cost-effective stormwater management technologies. This program has since provided grants worth nearly $51 million, primarily to local councils and community groups to help them undertake stormwater management projects. New South Wales is presently considering a second phase for the Stormwater Program.

6.12.14 A Stormwater Trust Board consisting of CEOs and a peak local government representative is oversighting the stormwater program and advising government on the strategic directions. Community,

industry and conservation groups are represented on a State Stormwater Advisory Committee. The Committee is a consultative body to the Stormwater Board and provides advice on the stormwater management issues relating to implementation of the program.

6.12.15 The EPA has researched and produced guidelines to encourage the appropriate use of biosolids. In the SWC's area of responsibility, more than 95% of all biosolids produced are now beneficially used. SWC has been supporting extensive research by NSW Department of Agriculture on the environmental and health impacts of biosolids reuse. In the lower Hunter region, biosolids from HWC's waste water treatment plants are recycled for coal mine site rehabilitation, agricultural use and for composting with municipal waste at the State's first large-scale municipal waste co-composting facility at Raymond Terrace.

6.12.16 A significant new initiative on wastewater reuse is underway in the Shoalhaven area. The scheme will manage all effluent on a regional basis through the provision of a major upgrade of treatment and reticulation systems to allow up to 70% of all wastewater to be reused.

6.12.17 The NSW Government's SepticSafe Program provides financial and technical assistance to councils for the development of better on-site sewage management strategies. Over 280,000 NSW households (of which most are farms) live in areas that do not have access to centralised sewerage services and rely on septic systems and other on-site household reticulated services. Council sewage management strategies are used to identify areas of potential sewage pollution risk and to guide the delivery of appropriate regulation, supervision and support services.

Implement Water Quality Management Strategies

6.12.18 New South Wales has been actively supporting the development of the National Water Quality Management Strategy (NWQMS) and implementing the Guidelines within various programs at the State level, including the setting of water quality objectives based on both the management and scientific framework of the water quality guidelines under the Strategy.

6.12.19 In October 1999 the NSW Government approved the release of interim environmental objectives for 31 NSW catchments, as guidelines to local water management committees. The release included a statement by the Minister of the Environment that the Government is proud of the pioneering work that has been done to develop these tools within the framework of the NWQMS. The objectives are being used as the basis for water management plans to improve river health and sustainability.

6.12.20 These interim objectives are the first stage of NSW's complementary, two stage process for setting environmental objectives. Stage 2 involves HRC inquiries which will recommend longer term environmental objectives. The HRC has completed final reports on the Williams, Hawkesbury-Nepean, Shoalhaven, Clarence and Bega catchments. The Commission has also completed a report on strategic issues arising from inquiries into coastal catchments. Inquiries are underway into the Woronora/ Georges River/ Botany Bay catchments and into coastal lakes. Inquiries are proposed or have commenced for the Tweed/ Brunswick, Hastings/ Manning, Richmond and Hunter Rivers.

6.12.21 New South Wales has a statewide approach to water quality management which targets the attainment of ambient environmental objectives (for both water quality and river flow) through the process of water management planning (which also includes groundwater). Catchment planning is promoted through the established catchment management boards. The Government has recognised the special demands of the high growth areas of the New South Wales coastal area, with continued implementation of the NSW Coastal Policy.

6.12.22 New South Wales has actively participated in the development of all national guidelines completed to date. In New South Wales the various national guidelines are used as key documents for defining water quality goals or for providing direct guidance to industry (eg reclaimed water for agricultural industries). For some key sources (urban stormwater and sewage management) New South Wales has or is implementing key programs which are more advanced than the national guidelines, although consistent in the principles implemented.

6.12.23 New South Wales has conducted impact assessments for the national guidelines which have provided a clearer understanding of how these guidelines will impact on industries and economic development and how to best implement the guidelines.

6.12.24 The *Protection of the Environment Operations Act (POEO) Act 1997* commenced in July 1999 and consolidates, streamlines and strengthens the framework for environmental regulation, with a more integrated approach to environmental protection licensing.

6.12.25 New South Wales has made considerable progress with developing market based mechanisms such as load based licensing to provide a pricing incentive for polluters to perform beyond their minimum compliance standards. The load based licensing scheme (under the Protection of the Environment Operations (General) Regulation 1998) commenced on 1 July 1999.

6.12.26 The Hunter Salinity Trading Scheme commenced in January 1995 with the objective of ensuring river salinity remains low enough to

allow the water to be used for all purposes. The Scheme has now been formalised via the Protection of the Environment Operations Act (Hunter River Salinity Trading Scheme) Regulation 2001 which has been made possible by recent amendments to the Protection of the Environment Operations Act facilitating the development and implementation of trading schemes.

6.12.27 In July 1996 the South Creek Bubble Licence Scheme was introduced which allows three sewage treatment plants to vary their nutrient loads discharged provided the total load from the three plants is not exceeded. This enables reductions in pollution to be focused where the costs are lowest.

6.12.28 The EPA has developed environmental education programs linked to environmental priorities, including 'The Drain is Just for Rain' program as part of the government's urban stormwater program, and Solutions to Pollution stormwater education program to demonstrate the link between people's actions and impacts on waterways. New South Wales has established an Environmental Education Council to assist in coordinating and promoting this key tool.

6.12.29 New South Wales has established a State Water Monitoring Coordinating Committee which has developed a Statewide strategy for monitoring which provides coordination across agencies and both broad performance monitoring and campaign monitoring for special studies. This program, together with State of Environment Reporting (at local and state levels), is a useful tool for monitoring the effectiveness of the NWQMS and other State-based initiatives.

6.12.30 New South Wales is actively supporting the development of remaining modules (guidelines for sewer overflows and biosolids) through active participation in the national Contact Group, and providing technical and policy assistance to the Commonwealth in finalising these guidelines.

6.12.31 SWC has been exploring possibilities of supplying different qualities of water for different purposes. In particular, SWC has been investigating commercial opportunities for non-potable supply. Approximately 23 million litres of wastewater is currently being recycled from SWC sewerage treatment plants. This is equivalent to around two percent of the Sydney region's daily demand for water. HWC has an established track record of wastewater reuse with major industry in the lower Hunter region. In 1999-2000 over 4000 megalitres of effluent was reused, which is around 10% of average dry weather wastewater flows.

Landcare

6.12.32 The NSW Government has developed a broad suite of policies to guide landcare programs to protect rivers of high environmental

values and sensitivities. The *Native Vegetation Conservation Act* recognises sensitive areas, as does the stressed rivers classification developed within the NSW Water Reforms.

6.12.33 Initially, all unregulated rivers in New South Wales (some 680 sub-catchments) were assessed as to their level of conservation value or stress. Under the *Water Management Act* all water sources need to be classified by December 2001. This work is underway with the initial focus on those rivers and aquifers that have been identified as priority systems for the establishment of water sharing plans.

6.12.34 A number of wetland management policies and guidelines are assisting the protection of these sensitive areas.

National Water Quality Management Strategy

6.12.35 New South Wales contributed to and is implementing the National Water Quality Management Strategy and the pilot programs will provide a firm basis for reviewing current approaches to town wastewater sewage disposal. The Deepwater Ocean Outfalls Study off Sydney has already provided a substantial research base for such a review.

Regulating Environmental Impacts of Water Use Activities

6.12.36 In addition to strategies for catchment and water quality management and the protection of environmental flows, New South Wales regulates the impacts of works and activities related to water use to limit their environmental impacts. This will be clarified and made consistent by new approvals under the *Water Management Act,* which include the following:

- *Water use approvals* will ensure that the use of water for a particular purpose at a specified location is appropriate.
- *Water management work approvals* authorise the construction and use of works for water supply, drainage or flood management and may be issued for up to 20 years.
- *Controlled activity approvals* authorise the holder to carry out a controlled activity in, on or under waterfront land, which includes the beds and banks of rivers and beds and land around wetlands and estuaries. Controlled activity approvals may be issued for up to 3 years. A 'controlled activity' is defined as the construction of a building, the carrying out of a work, removal of material, deposition of material, or any other activity that affects the quantity or flow of water in a water source. 'Waterfront land' is defined in the dictionary as including the bed of any river, estuary or lake, coastal waters and land generally within 40 metres of the highest bank of a river or lake, or the mean high water mark of any tidal waters.

- *Aquifer interference activity approvals* authorise the holder to conduct activities that involve interference with an aquifer. This approval is intended for activities that intersect groundwater other than the construction and operation of bores (such as excavations). These approvals may be issued for up to 10 years.

6.13 Research

Framework Requirements

6.13.1 In relation to water and related research, the Council agreed member governments would:

(a) give higher priority to the research necessary to progress implementation of the strategic framework, including consistent methodologies for determining environmental flow requirements; and

(b) to greater coordination and liaison between research agencies to more effectively utilise the expertise of bodies such as the Land and Water Research and Development Corporation, the Murray-Darling Basin Commission and other State and Commonwealth organisations.

NSW Report

High Priority to Research

6.13.2 New South Wales is undertaking research on, or contributing funding to, a wide range of water related research.

Greater Co-ordination and Liaison

6.13.3 New South Wales is working actively with LWRRDC, MDBC and other State and Commonwealth organisations to improve liaison, information sharing and the coordination of research.

6.14 Taxation

Framework Requirements

6.14.1 In relation to taxation, the Council agreed:

(a) that a sub-committee of Commonwealth and State officials, established by the Working Group on Micro-economic Reform, meet to discuss taxation issues of relevance to the water industry with a view to reporting, through the Working Group, to the Council within 12 months;

(b) to support water-related taxation issues being examined in the proposed Industry Commission Inquiry into Private Sector Infrastructure Funding; and

(c) to accept any future consideration of tax compensation payments involving the water industry being dealt with through the Commonwealth-State Working Group established at the July 1993 financial Premiers' Conference.

NSW Report

Meeting to Discuss Tax Issues

6.14.2 A Commonwealth-State standing committee was convened to put in place and monitor a tax equivalent regime (TER) for State business entities, as agreed under the Statement of Policy Intent (SOPI). The standing committee has not met for some time.

6.14.3 The issue of the taxation of government entities by other governments (or reciprocal taxation) has been the subject of review by Treasuries as agreed under an Inter-jurisdictional Tax Agreement. The specially appointed committee's work was finalised in early 1998. The work did not specifically address water, but its consideration of how to implement reciprocal taxation arrangements is pertinent to commercialised water businesses.

6.14.4 Following Governments' agreement to the report of the committee, the issue of the application of reciprocal taxation to Local Government (including water and sewerage businesses) is to be considered.

6.14.5 New South Wales and other States, consistent with the Competition Principles Agreement, are moving to position local councils' water

and sewerage operations as stand-alone commercial businesses. The effect is to expose them to Commonwealth tax liability where they may previously not have been liable. This constitutes an unintended disincentive to reform.

6.14.6 SCARM has separately flagged that imposition of taxes adds to the amount to be recovered from users and makes full cost recovery more difficult. A process for achieving full cost recovery is in place. But IPART, the NSW independent regulator, has flagged that the rate of price reform progress should have regard to a tolerable annual impact on users. This will mean a lengthier process for achieving full cost recovery. On the matter of tax treatment, a case would need to be made for differential tax treatment of water businesses relative to other tax paying businesses.

Examination by Productivity Commission

6.14.7 It is understood that the proposed Productivity Commission inquiry into private sector infrastructure funding did not proceed. New South Wales regards the specially appointed Commonwealth-State committee as the appropriate forum for examination of water-related taxation issues.

Tax Compensation Payments

6.14.8 New South Wales is of the view that taxation issues affecting the water industry should initially be addressed as part of the generic coverage of the specially appointed Commonwealth-State committee referenced above.

6.15 Reporting

Framework Requirements

6.15.1 In relation to recommendations (3) through (8), the Council agreed:

(a) that the Working Group on Water Resource Policy would coordinate a report to the Council for its first meeting in 1995 on progress achieved in implementing this framework including reductions in cross-subsidies, movement towards full-cost recovery pricing in urban and rural areas and the establishment of transferable water entitlements, and

(b) that as part of the monitoring and review process, ARMCANZ, ANZECC and, where appropriate, the Murray-Darling Basin Ministerial Council and the Ministerial Council for Planning, Housing and Local Government, would report annually over the succeeding four years, and again at its first meeting in 2001, to the Council of Australian Governments on progress in implementing the various initiatives and reforms covered in this strategic framework.

NSW Report

1995 Progress Report

6.15.2 This is not a NSW requirement.

Annual Reporting Requirement

6.15.3 The present report will serve as the basis for the NSW report to NCC/ COAG.

7 Road Transport

7.1 Proposed Framework for the Third Tranche Payment

7.1.1 NSW supports the proposed framework for the third tranche assessment of road transport reforms, covering the following key areas:

- Combined Vehicle Standards;
- Australian Road Rules;
- Combined Truck and Bus Driving Hours;
- Consistent On-Road Enforcement for Roadworthiness;
- The Second Heavy Vehicle Charges Determination; and
- Ultra-low Floor Bus Axle Mass Increase.

7.1.2 NSW has fully implemented all but one of the nominated reforms (Combined Truck and Bus Driving Hours).

7.1.3 Amongst other things, the Combined Bus and Truck Driving Hours reform is intended to align the conditions defining hours of driving and other work for bus and truck drivers. The effect of this reform in NSW would be to increase the potential work hours for bus drivers.

7.1.4 The NSW Government is of the view that the responsibilities and demands placed on bus drivers carrying passengers are greater than those on truck drivers carrying freight and, in those circumstances, it is appropriate that stricter limits apply to bus drivers. For this reason, and particularly given the premium the community places on bus safety, this aspect of the reforms has not been implemented in NSW.

7.1.5 In all other respects, the NSW Government supports and has implemented the reforms set out in the assessment framework.

7.2 Review of Legislation

Tow Truck Act 1998

7.2.1 Since 1999, the NSW Government has initiated a series of fundamental reforms to the regulatory and enforcement arrangements in the tow truck industry. The *Tow Truck Act 1998* (which replaced the former *Tow Truck Act 1989*) gives effect to a new legislative scheme recommended by the 1998 Tow Truck Industry Review.

7.2.2 The Act establishes a licensing and certification scheme for tow truck operators and drivers. All operators must be licensed. The licence, which generally has a term of one year, authorises the licensee to carry out the kind of towing work specified in the licence.

7.2.3 The Tow Truck Authority (TTA) is the regulatory and administrative authority for the industry. The TTA may refuse an application for a licence:

- if the applicant is not a fit and proper person to hold a licence; or
- if the granting of the licence would be contrary to the public interest.

7.2.4 The TTA also determines the maximum charges for towing, salvage or storage of motor vehicles.

7.2.5 The Act provides for the establishment, administration and operation of a scheme for the allocation of towing work and the attendance of tow trucks at the scene of accidents involving motor vehicles (known as the Job Allocation Scheme). It is an offence to tow a motor vehicle involved in an accident from the scene of the accident before obtaining authorisation for that job. The new scheme is being introduced to ensure fairer working conditions within the industry, improved public safety and a reduction of undesirable and unlawful activities within the tow truck industry.

7.2.6 NSW has given an undertaking to the NCC that a review of the *Tow Truck Act* will be initiated six months after the Job Allocation Scheme has commenced. The scheme is still being negotiated with stakeholders.

7.2.7 It is expected that the terms of reference for the NCP review will follow the general format (see Annexure 1) and the agreed process for an external review.

7.2.8 In May 2000, the NCC inquired as to whether clause 69(2) of the *Tow Truck Industry Regulation* discriminates against interstate operators. Clause 69(2) of the Regulation permits a tow truck operator licensed in another State to tow a vehicle from that State into NSW, but does not allow the operator to collect a vehicle in NSW and tow it to another State, unless they also have a NSW license.

7.2.9 The Crown Solicitor's advice was sought on the matter. That advice was to the effect that the licensing and operating provisions and, in particular, clause 69 (2) of the Regulation do not discriminate against interstate operators in an inappropriate way.

Dangerous Goods Legislation

7.2.10 The *Dangerous Goods Act 1975* consolidates and amends the law relating to explosives and other dangerous substances. Legislative amendments involving the transport of dangerous goods commenced in April 1998 to give effect to the first module of reforms to national road transport law developed through the National Road Transport Council. The *Dangerous Goods (General) Regulation 1999* came into effect on 1 September 1999.

7.2.11 Public comment has been received on the Draft National Standard on storage and handling, and the national standard is being finalised. NCP review will commence after the National Standard has been finalised.

8 Rail

8.1 National Rail Corporation (Agreement) Act 1991

8.1.1 The *National Rail Corporation (Agreement) Act 1991* gives effect to an agreement between NSW, the Commonwealth and other States relating to the National Rail Corporation Ltd (NRC). The NRC was established primarily to operate interstate containerised rail freight services.

8.1.2 The Shareholders Agreement establishing the NRC provided for a transfer of responsibilities and assets to the corporation over a three-year transition period. The Agreement also specified a five-year establishment period, after which the company was expected to be fully established and to operate profitably.

8.1.3 During the pre-sale process, shareholders agreed to remove the restriction in s.7 of the Act which prevented the corporation from carrying intrastate freight. In NSW, the *Statute Law (Miscellaneous Provisions) Act 2000* repealed the restriction in August 2000.

8.2 Rail Freight Corporation

8.2.1 The NCC has asked NSW to confirm the status of the competitive neutrality complaint lodged in September 1999 by Capricorn Capital against the Rail Freight Corporation (FreightCorp). The complainant requested the Premier to refer the matter to the Independent Pricing and Regulatory Tribunal for investigation.

8.2.2 Information on the nature of the complaint and the NSW Government position is provided in Section 2.5 of this report (paragraphs 2.5.13 to 2.5.23).

8.2.3 On the timetable for privatisation, it is intended that the sale of FreightCorp will be undertaken in parallel with the Commonwealth Government's sale of the National Rail Corporation. The sale is likely to occur in 2001 and will be subject to a number of conditions pertaining to regional services and employment levels.

8.3 Rail Safety Act 1993

8.3.1 In NSW, the source of regulatory authority over safety in respect of the rail industry derives from the *Rail Safety Act 1993*. The Act was developed to cover all rail operations in NSW, separating the regulator from operations for the first time and introducing more accountability provisions within the rail industry.

8.3.2 The *Rail Safety Act* provides for the establishment of an accreditation scheme for owners and operators of railways and for the certification of the competency of railway employees performing railway safety work. It also provides for the development and monitoring of safety performance standards.

8.3.3 The NSW Government completed a statutory review of the Act, to determine whether the policy objectives of the Act remain valid, and whether the terms of the Act remain appropriate for securing those objectives.

8.3.4 The Government tabled a report in Parliament on the outcomes of the statutory review in September 1999. However, proposed amendments arising from the statutory review were deferred pending Government consideration of the Final Report of the Inquiry into the Glenbrook Rail Accident. The Final Report was presented to the Governor in April 2001.

8.3.5 The NCP review has also been deferred. This is to ensure that the NCP review is fully cognisant of the possibly wide-ranging changes to the *Rail Safety Act 1993* that may arise as a result of the Government's response to the Final Report into the Glenbrook Rail Accident.

9 Taxi Services

9.1 Regulatory Framework

9.1.1 The NSW taxi industry is regulated by the *Passenger Transport Act 1990*, which is administered by the Department of Transport. The mechanisms used to regulate the taxi industry include:

- issuing of licences;
- accreditation of taxi operators;
- authorisation of drivers and approval of training schools;
- controls on maximum taxi fares;
- performance standards, for example, in relation to customer service, vehicles and driver safety; and
- compliance systems.

9.2 NCP Review

9.2.1 In July 1998, the Premier referred the *Passenger Transport Act* to the Independent Pricing and Regulatory Tribunal (IPART) to determine whether the legislation meets the requirements of the Competition Principles Agreement and Part IV of the Commonwealth *Trade Practices Act 1974* in relation to the taxi cab and private car hire industries.

9.2.2 The terms of reference and details of the review process are contained in IPART's Final Report of November 1999 (www.ipart.nsw.gov.au). Broadly speaking, preparation of the Final Report followed the release of an Issues Paper in October 1998, consideration of public submissions, public hearings and consideration of submissions made in response to an Interim Report published in August 1999.

9.3 Recommendations

9.3.1 IPART was satisfied that regulating the quality of taxi services benefits passengers and the industry. However, the Tribunal found that restricting the number of taxi licences does not appear to generate any significant benefits for passengers, drivers, or anyone working in the industry other than the licence holders.

9.3.2 Increasing the number of taxis in Sydney would help improve the industry by augmenting the supply at peak times. However, the Tribunal also noted some unsuccessful attempts at deregulation in other jurisdictions and therefore recommended the adoption of a

phased approach to increasing the number of taxi licences in Sydney by 5 per cent per annum over the next five years. It also recommended a review of implementation and passenger service outcomes in 2003.

9.3.3 On the matter of price controls, the Tribunal recommended that maximum taxi fares should continue to be regulated.

9.3.4 The Tribunal's public interest justification for its recommendations is contained in the 1999 Final Report.

9.4 Policy Response

9.4.1 The majority of IPART's recommendations have been endorsed by the Government, including the phased approach to increasing the number of taxi licences in Sydney. The Government agreed to release 450 additional licences by December 2000.

9.4.2 To date, 180 taxi licences have been issued: 60 short term (or six-year) licences and 120 ordinary (or twenty-year) licences restricted to wheelchair accessible taxis. It is planned that a further 80 wheelchair accessible licences will be auctioned in mid-2001.

9.4.3 A Discussion Paper on regional taxi issues will be prepared by the Government, including those recommendations made by IPART in its Final Report.

9.4.4 The Department has already commenced preliminary work to facilitate the review of implementation and passenger service outcomes in 2003.

10 Other Transport Services

10.1 Marine Safety

10.1.1 The NSW Government has demonstrated its willingness to progressively reform marine legislation. Some anti-competitive elements of former Acts have been dealt with under the Licence Reduction Program. In February 1997, ten licences and permits were abolished under the *Regulatory Reduction Act 1996*.

10.1.2 The Government also introduced the *Marine Safety Act* in 1998 to repeal, consolidate and streamline the maritime safety provisions contained in the *Maritime Services Act 1935*; *Marine Pilotage Licensing Act 1971*; *Navigation Act 1901*; *Commercial Vessels Act 1979*; Marine *(Boating Safety – Alcohol and Drugs) Act 1991*; and certain other marine legislation. In all, seven Acts and fifteen regulations have been rationalised into three Acts and seven regulations.

10.1.3 The *Marine Safety Act* will not commence until the *Marine Safety Regulation* and the *Waterways Land and Water Management Regulation* are gazetted. Only Schedule 3.5 and s.142 of the Act have been proclaimed to date, however these provisions are minor. They relate to the commencement of an amendment to the *Local Government Act 1993* with respect to notices erected by local councils that prohibit or regulate the use of any water by vessels.

10.1.4 Outstanding NCP issues under the *Marine Safety Act 1998* will be reviewed by the Department of Transport in conjunction with the *Ports Corporatisation and Waterways Management Act 1995*.

10.2 Ports Corporation and Waterways Management

10.2.1 The *Ports Corporatisation and Waterways Management Act* establishes statutory state-owned corporations to manage the State's port facilities on major ports (ie, Port Kembla, Newcastle and Sydney) and creates the Waterways Authority to administer the *Marine Safety Act 1998*.

10.2.2 The Act also transfers the management of waterways and other marine safety functions to the Minister, and provides for port charges, pilotage and other marine matters.

10.2.3 A statutory review of the *Ports Corporatisation and Waterways Management Act* (required by section 114) has been completed by the Department of Transport. The NCP review is being progressed by the Department as a matter of priority and the terms of reference are currently being finalised. The review is to be supervised by a steering committee chaired by the Department of Transport and

comprising representatives from The Cabinet Office and NSW Treasury.

10.2.4 A review of NCP issues under the *Marine Safety Act* will be undertaken by the Waterways Authority once the Act has been fully proclaimed and has been in operation for a period of approximately one year.

11 Agriculture and Related Activities

11.1 Priority Areas

Agricultural and Veterinary Chemicals

11.1.1 Agricultural and veterinary (agvet) chemicals are regulated under Commonwealth, state and territory legislation. These laws establish a national registration scheme controlling the evaluation, registration, handling and control of agvet chemicals up until the point of sale. Regulatory control, beyond the point of sale, is managed by each jurisdiction through control-of-use legislation.

11.1.2 The COAG national review of Agricultural and Veterinary Chemicals Legislation was undertaken by the Agricultural and Resource Management Council of Australia and New Zealand (ARMCANZ), using independent consultants.

11.1.3 The Review examined the National Registration Scheme legislation and control-of-use legislation in some states. In NSW the review of 'control-of-use' legislation is being undertaken as a separate State-based review (see Appendix 2 for details).

11.1.4 The Review was completed in January 1999. Restrictions on competition include:

- the licensing and registration requirements which restrict entry to the agvet chemical manufacturing market and in some situations provide a competitive advantage to existing manufacturers;
- the requirement for agvet chemical spray contractors to hold various forms of business licences or accreditations;
- exemptions for veterinary surgeons from provisions relating to supply and use, which are discriminatory;
- a legislative monopoly where the National Registration Authority is the single provider of registration decisions;
- the regulation of product standards; and
- the associated compliance obligations which may impose substantial costs and restrict new entrants to the market.

11.1.5 The Review made 20 recommendations. Recommendations 1 to 11 relate to the Commonwealth, state and territory legislation which establishes the National Registration Scheme. Recommendations 12 to 20 relate to control of use legislation.

11.1.6 In February 1999 SCARM/ ARMCANZ considered the Final Report and established a Signatories Working Group (SWG) to draft a co-ordinated response to the Review. This inter-governmental response was completed in January 2000.

11.1.7 The SWG supported a number of the recommendations, either fully, or by way of "the intent" of the recommendation. In it's response, the SWG proposed the establishment of specific Working Groups to address those recommendations in the Review Report which the SWG felt required further examination. These included recommendations relating to the following issues:

The identification and regulation of low risk chemicals. Chemicals that do not fall within the scope of the Agvet Code are regulated under the National Industrial Chemicals Notification and Assessment Scheme (NICNAS). If the definition of chemicals covered by the Code were to be changed, there could be significant implications for other chemical regulatory arrangements/ schemes. These implications were not evaluated in the Review.

Suppliers of assessment services. Matters relating to the quality and standard of assessments, and how these would be determined, monitored and enforced, would need to be considered in further detail.

Manufacturer licensing. The SWG did not support Recommendation 9 of the Review, relating to optional GMP ("Good Manufacturing Practice") standards for manufacturers of low risk veterinary chemicals. The SWG felt that this could lead to potential risks to public health. The fact that agricultural manufacturers are presently exempt from the licensing provisions was of concern to the SWG. The Working Group would establish if licensing was required.

Data protection. The SWG considered that the response to Recommendation 11 of the Review should be incorporated in the current AFFA review of data protection. The outcome of this review will be provided to SCARM/ ARMCANZ under the Ministerial Agreement establishing the Agvet Code.

11.1.8 The SWG did not support Recommendation 6 of the Review, relating to the claimed level of efficacy on the label of a chemical. The SWG felt that, by not including the "appropriateness" of the chemical on labels, Australia's international obligations in relation to the protection of public health, occupational health and safety and protection of the environment may be compromised.

11.1.9 The Taskforce set up to develop a nationally consistent approach to control-of-use matters such as off-label use, licensing requirements and exemptions from supply and use provisions is still is yet to complete its work. It is expected that the Taskforce will provide

ARMCANZ (and possibly COAG) with recommendations that address the specific anti-competitive elements identified by the Review relating to the current control-of-use regulatory regime.

11.1.10 In January 2000, the COAG Committee on Regulatory Reform was asked to comment on a draft final inter-governmental response to the Review by the Chairman of the SWG. NSW notes that the Committee responded that it had no concerns with the draft response or the terms of reference for the 'control of use' taskforce.

New South Wales Grains Board

11.1.11 A copy of the review report has previously been provided to the NCC and the Framework provides a reasonable account of the eventual outcome of the Government's decision on this issue. The NCC has asked for an explanation of the differences between the review recommendations and the eventual Government decision.

11.1.12 A number of the Government's decisions went further than the review recommendations in terms of removing restrictions on competition. For example:

(i) the vesting powers over all grains other than barley, canola and sorghum (ie oats, sunflower, safflower, linseed and soybeans) were removed immediately, rather than after one year as recommended in the review report;

(ii) the vesting powers over domestic canola and sorghum were removed immediately, rather than after one year as recommended in the review report;

(iii) the vesting power over export barley has been sunsetted at 5 years, whereas the review recommended that a further review be conducted after 5 years to determine if the power should continue.

11.1.13 The review recommended that grain producers be given the option of privatising the Board, subject to the separation of its commercial and regulatory functions. The issue of privatisation became irrelevant with the Board's insolvency, and the Board will instead be wound up after 5 years. The sole agency arrangement with Grainco, and the appointment of an administrator to the Board, has effectively separated the Board's commercial and regulatory functions.

11.1.14 The Government retained vesting powers over domestic malting barley and export canola and sorghum for 5 years, rather than the 2 years extension recommended by the review for domestic malting barley and export canola, and one year for export sorghum.

11.1.15 The Government decided on the extended phase out of these three powers because of the unusual circumstances arising as a result of the Board's insolvency becoming apparent at the time of the decision on the

review's recommendations. The inclusion of these powers with the single export desk for barley enabled Grainco, as the successful candidate, immediately take on the Board's trading responsibilities and infrastructure.

11.1.16 In addition, the continuation of vesting on these commodities was necessary in order that the authorised buyer fee (of $1.50 per tonne) could be continued in order to fund the outstanding pool payments to growers.

11.1.17 It should be noted that the review report did not identify any costs resulting from single desk arrangements for sorghum and canola, and in its research report noted that the estimated annual net losses to the NSW economy from the export and domestic single desk arrangements for barley were "negligible".

Dairy

11.1.18 NSW implemented its dairy reform legislation on 30 June 2000. The food safety functions of the previous Dairy Corporation had already been incorporated into Safe Food, a recently created body with responsibility for food safety regulation for all fresh food products to the "back of shopdoor".

Poultry

11.1.19 The *Poultry Meat Industry Act 1986* regulates the contractual arrangements between poultry growers and processors. The principal restriction on competition is the requirement for contracts between growers and processors to be ratified by a statutory industry committee, the Poultry Meat Industry Committee.

11.1.20 The Review Group was chaired by NSW Agriculture and had representatives from The Cabinet Office, NSW Treasury, poultry processors, poultry growers, the Poultry Meat Industry Committee and the NSW Farmers' Association.

11.1.21 The Review Group released an issues paper in April 1998 and received over 180 submissions in response. The Review Group conducted public forums on the Issues Paper in Seven Hills, Maitland and Tamworth.

11.1.22 The Review Group completed its final report in November 1999, however several follow-up actions recommended by the review meant that the review did not fully report to the Minister for Agriculture until mid 2000. The final report is yet to be publicly released, as it is still under active Government consideration.

Rice

11.1.23 As noted in the Framework, in August 2000, NSW gave in principle support to the possible introduction of a Commonwealth single export desk arrangement, and consequent deregulation of NSW rice marketing arrangements. Since then the model has been further developed, and on 27 March NSW agreed that the Commonwealth could commence consultation on the model with other jurisdictions. NSW's agreement is conditional upon the Commonwealth noting in the draft model that NSW considers that the proposed arrangement should be of five years duration, and that the Ricegrowers Co-operative Limited should have some right of veto over rice exports by other parties. Following the consultation these issues would then be resolved between NSW and the Commonwealth.

11.1.24 NSW has confirmed that it would deregulate its domestic rice marketing arrangements concurrently with the introduction of any jointly agreed Commonwealth export arrangements.

Food Regulation

11.1.25 As agreed in the Intergovernmental Agreement signed on 3 November 2000, NSW will amend its Food Act in accordance with the Model Food Act.

Veterinary Surgeons

11.1.26 The *Veterinary Surgeons Act* 1986 requires licensing of veterinary surgeons and veterinary premises; restricts the use of the title 'veterinary surgeon' to licensed veterinarians; restrict the ownership of veterinary premises; controls advertising; and provides for disciplinary procedures against veterinary surgeons.

11.1.27 The Review Group was chaired by NSW Agriculture and had representatives from the NSW Veterinary Surgeons Board, consumers of veterinary services, animal welfare interests, NSW Treasury, NSW Agriculture and The Cabinet Office. This review was conducted jointly with a review of the *Stock (Artificial Breeding) Act 1985.*

11.1.28 The Review Group released an issues paper in May 1997 and received over 150 submissions. The Review Group conducted public forums in Dubbo, Parramatta, Wagga Wagga and Armidale. A meeting was also held in Parramatta as a follow-up to a workshop for invited industry representatives that occurred prior to commencement of the review.

11.1.29 The Review Group completed its final report in December 1998. The final report is yet to be publicly released, as it is still under active Government consideration.

11.2 Non-Priority Areas

11.2.1 Line item reporting on the following legislation and marketing boards is contained in Annexure 2

MIA Wine Grapes Marketing Board

Murray Valley Citrus Marketing Act 1989 (complementary to the Victorian *Murray Valley Citrus Marketing Act*)

Rural Lands Protection Act 1989

Apiaries Act 1985

Cattle Compensation Act 1951

Exotic Diseases of Animals Act 1991

Banana Industry Act 1987

Plant Diseases Act 1924

Stock Diseases Act 1982

Swine Compensation Act 1928

Stock Foods Act 1940

Stock (Chemical Residues) Act 1975

Stock Medicines Act 1975

Noxious Weeds Act 1993

Seeds Act 1982

Prevention of Cruelty to Animals Act 1979

Agricultural Tenancies Act 1990

Farm Debt Mediation Act 1994

Exhibited Animals Protection Act 1986

Non Indigenous Animals Act 1987

Animal Research Act 1985

Rural Assistance Act 1989

12 Forestry and Fisheries

Forestry

12.1 Competitive Neutrality

NSW Regulatory Framework

12.1.1 Last year the NSW Government amended the *Independent Pricing and Regulatory Tribunal Act 1992* to provide the Independent Pricing and Regulatory Tribunal (IPART) with a role under the State's complaints mechanism (as contemplated in the Competition Principles Agreement). IPART's role is to investigate complaints referred by the Premier that concern the commercial activities of public authorities and their adherence to competitive neutrality principles.

12.1.2 State Forests is a Government Trading Enterprise and its activities are covered by the IPART Act. To date no complaints have been received by IPART in relation to forestry issues.

Market Monopoly Issues

12.1.3 State Forests is not a public monopoly, and neither does it enjoy any net advantage over its competitors as a result of public ownership. However, State Forests is the major supplier of timber in New South Wales and sells much of its timber under medium to long term wood supply agreements. Without such agreements the incentive for the timber-processing sector to invest the required capital to construct an efficient and internationally competitive industry is unlikely to occur.

12.1.4 The three main businesses can be split up into softwood plantations, hardwood plantations and native forests. For 1998 (SF Annual Report) softwood plantations represents 97% of the softwood sawlog market in New South Wales, hardwood plantations represents 100% (a new initiative and generally small volumes) and native forests 87%. Private property log sales in New South Wales are likely to be currently understated for native forests. Private property hardwood sawlog production in 1990/ 91 was 32%, when data collection was more comprehensive.

Pricing of Logs

12.1.5 The New South Wales Government is committed to the pricing and allocation principles in the National Forest Policy Statement through the North East and Eden Regional Forest Agreements.

12.1.6 State Forests maintains an accounting system that takes into account the full costs of growing trees and the investment of capital in those areas. State Forests' financial reporting is prepared in accordance with the *Public Finance Audit Act (1983),* the *Public Finance and Audit (General) Regulation 1995*, Australian Accounting Standards, other mandatory professional reporting requirements and Industry Practice.

12.1.7 State Forests' pricing system for hardwood timber provides for an objective approach to pricing by enabling a market value of timber to be derived from the market price of end products rather than on costs or profit targets. This is consistent with the view expressed in the Productivity Commission's draft report on Competitive Neutrality in Forestry that a useful way of assessing the market value of logs is to compare log prices with their residual value.

12.1.8 In 1997-98, State Forests implemented the Hardwood Log Value Pricing System (HLVPS) in consultation with the industry for determining the value of hardwood timber sold by State Forests. This pricing system provides for an objective approach to pricing that the timber industry demanded by enabling a market value of timber to be derived from the market price of end products rather than on State Forests' costs or profit targets.

12.1.9 Given that State Forests' log prices are influenced to a large extent by external market factors, it manages production costs to ensure profitability and generate dividends to the NSW Treasury. When there is a severe downturn in demand and price, State Forests adopts cost cutting measures and constrains its expenditure to achieve acceptable financial outcomes and maintain target rates of return.

12.1.10 Softwood contracts with industry typically require State Forests to supply at a given rate and price and contain a 'take or pay' clause binding the buyer to a proportion of their commitment in the event of market or production fluctuations. Softwood logs ready for harvesting but not needed to meet supply commitments may be put to open tender or offered to known potential customers at market prices.

12.1.11 Softwood is a commodity competitively traded across the world with minimal import barriers. State Forests competes against numerous private pine plantation owners in New South Wales, interstate and overseas. State Forests' pricing policy is to charge softwood royalties at the international market price adjusted for regional variations in timber quality, production costs and market outlook. This occurs in the context of a volatile domestic building market. The recent Walcha tender is a good example of competitive tendering and market based pricing for the sawn timber.

12.1.12 More detailed information on State Forests' log allocation and pricing system is given in Annexure 5.

12.2 Structural Reform

Separation of Regulatory and Commercial Functions

12.2.1 Regulatory and commercial functions for forestry operations in New South Wales are separated. The Department of Land & Water Conservation (DLWC) is the New South Wales agency responsible for the *Plantations & Reafforestation Act (1999)*. When proclaimed, this Act will codify environmental standards, and provide a streamlined and integrated scheme, for the establishment, management and harvesting of timber and other plantations on public and private land in New South Wales.

12.2.2 Regulatory measures covering native forestry operations on public lands in New South Wales are determined by agencies independent of State Forests (eg NSW National Parks & Wildlife Service (conservation & biodiversity), Environmental Protection Authority (water pollution), NSW Fisheries (fisheries management) and DLWC (soil conservation)). These agencies are also involved in the auditing of compliance to these regulatory requirements.

Regulatory Neutrality

12.2.3 The *Plantations and Reafforestation Act 1999* is a key component of the NSW Government forestry reform process. It meets obligations under the National Competition Policy for both structural and competitive neutrality. The Act covers all plantations established for timber production or for environmental purposes on both public and private lands. It is administered by the Department of Land and Water Conservation.

12.2.4 The *Forestry and National Park Estate Act 1998* created a new system for forest management on public land. The Act enabled the streamlining of regulation of native forestry operations through the Integrated Forestry Operation Approval (IFOA). The development of the IFOA was coordinated by the Department of Urban Affairs and Planning with input from State regulatory authorities NPWS, EPA and NSW Fisheries.

12.2.5 The *Native Vegetation Conservation Act 1997* regulates clearing on private land including private forestry operations greater than 2 hectares, although an exemption for sustainable forestry currently applies under the Act. An independent committee is in the process of reviewing exemptions under the Act, including the one in respect of private forestry. The Department of Land and Water Conservation, as administrators of the Act, are developing a set of Best Operating Standards for Private Forest Logging that will have the status of a Code of Practice under the Act (see Native Vegetation Conservation Act below).

Production Controls

12.2.6 Under the National Forests Policy Statement the NSW Government is obligated to set a regulatory framework for the use of native forests in order to achieve social and environmental objectives. Many of the attributes and values associated with forests are public goods, such as ecological processes, specified conservation and aesthetic values. The objective of regulation is to ensure that harvesting of native timber occurs on a sustainable basis and in accordance with appropriate environmental practice.

12.2.7 The Commonwealth Government has accredited NSW Forestry Agreements (developed under the auspices of the *Forestry & National Park Estate Act 1998).* These State agreements specify environmental regulatory controls and allow for long term wood supply agreements with industry. Regional Forest Agreements (RFAs) have been implemented with the endorsement of the Commonwealth Government. Current production controls are premised on sustainability requirements that were identified through scientifically based assessments across the eastern coastal areas. These assessments were undertaken by the Resource and Conservation Assessment Council and included the environmental, social, economic and cultural values of these forests.

Market Entry

12.2.8 Regional Forest Agreements between the States and the Commonwealth provide for long term supply contracts that are divisible and tradeable. The arrangements therefore provide opportunities for new market entrants.

12.2.9 State Forests has agreements with industry that provide for medium to long term wood supply. Agreement conditions allow trading of Agreement holders' businesses or logs on the open market, permitting new industry to gain market entry. Additionally, State Forests openly advertises surplus softwood and hardwood resources for tender. These arrangements replaced previous practice where State Forests allocated annual timber quotas on a discretionary basis.

12.3 Forestry Legislation

12.3.1 The NSW regulatory framework is consistent with obligations under a range of national agreements on forestry, biodiversity conservation and the environment, such as the National Forest Policy Statement, the Scoping Agreements for NSW Regional Forest Agreements and the Regional Forest Agreements themselves.

12.3.2 As noted in previous reports to the NCC, the Government has been reforming regulations affecting forestry in NSW. An update on progress in reforming legislation relevant to the forestry sector follows. The Government is satisfied that remaining restrictions on competition are minor and in the public interest.

Plantations and Reafforestation Act 1999

12.3.3 The *Plantations and Reafforestation Act 1999* covers all plantations established for timber production or for environmental purposes on both public and private lands. While some land is excluded from the operation of the Act (including land dedicated under the

National Parks and Wildlife Act 1974), State Forests are not excluded. This means that, in accordance with competitive neutrality principles, public owned plantations are faced with the same regulatory environment as private owned plantations.

12.3.4 A key objective of the above legislation is to promote and facilitate investment in timber plantations on essentially cleared land, and provide a streamlined and integrated scheme for the establishment, management and harvesting of timber and other forest plantations. The Act streamlines the regulatory framework by replacing a number of existing regulatory requirements with a single approval, hence incorporating:

- The *Environmental Planning and Assessment Act 1974*
- *Threatened Species Conservation Act 1995*
- *Fisheries Management Act 1994*
- *Rivers and Foreshore Improvement Act 1948*
- *Timber Plantations (Harvest Guarantee) Act 1995*
- *Roads Act 1993* (for operations in unformed Crown roads)

12.3.5 A Code of Practice under the Act is being developed and has recently been placed on public exhibition. The Act will be proclaimed when the Code has been gazetted, anticipated in June 2001.

12.3.6 The Act includes provisions for ongoing regulatory reform including review of the Code of Practice every five years and review of the Act five years from the date of assent.

Forestry and National Park Estate Act

12.3.7 *The Forestry & National Park Estate Act 1998* enables:

- Streamlined regulation of native forestry operations on public land through the Integrated Forestry Operation Approval (IFOA). The Department of Urban Affairs and Planning with input from State regulatory authorities NPWS, EPA and NSW Fisheries coordinated the development of the IFOA.
- The Integrated Forestry Operations Approvals (IFOAs) for logging public native forests, issued under the Forestry and National Parks Estate Act have two parts: the general environmental management and protection conditions derived from the Environmental Planning and Assessment Act; and a series of individual licences relating to conservation, biodiversity, threatened species and soil and water protection. The licences include a Threatened Species Licence issued under

the Threatened Species Conservation Act, an Environment Protection Licence issued under the Protection of the Environment Operations Act as well as the capacity to include a Threatened Fish Species Licence under the Fisheries Management Act. The FNPE Act provides for joint or individual prosecution of breaches by the responsible Ministers and/ or their agencies under this Act or their respective Acts (PEO Act, TSC Act or FM Act).

- NSW Forestry Agreements that specify environmental regulatory controls and allow for long term wood supply agreements with industry. Regional Forest Agreements (RFAs) have been implemented with the endorsement of the Commonwealth Government.

12.3.8 The Act maintains the separation between regulators (DUAP, EPA, NPWS and NSW Fisheries) and the commercial operator (State Forests).

Forestry Act 1916

12.3.9 The Minister for Forestry is responsible for the *Forestry Act 1916*. The Act provides for dedication, reservation, control and use of State forests, timber reserves and Crown land for forestry and other purposes and appoints a Commission to administer the Act, with powers to sell timber and other forest products, and to purchase and sell animals on State forests and timber reserves.

12.3.10 The Forestry Act establishes a commercial type licensing scheme administered by State Forests. Any person taking timber from land managed by State Forests requires a timber licence and a sawmill licence, is required by any person operating a mill sawing timber on crown and private lands.

12.3.11 Applicants for licences are protected from refusal on arbitrary or improper consideration grounds by general administrative law principles and there are no other barriers to granting of licences.

12.3.12 Timber licences are refused if the person is regarded as not being a fit and proper person to hold a licence or there is no commercial arrangement in place for the licensee to purchase timber resources from State Forests. Timber licences reflect commercial agreements between State Forests and the person requiring a licence to harvest timber on State Forests' land. It is merely a tool to ensure compliance with State Forests' requirements on safety, licence conditions imposed by regulatory agencies and compliance with specified timber volumes to be harvested.

12.3.13 Sawmill licences are not refused unless the applicant is not a fit a proper person to hold a licence. State Forests does not compete against these licensees since it is not the core business of State Forests. The majority of licence conditions deal with record keeping to prevent theft (especially on Crown land) and to allow the compilation of statistics for the private property industry. It does not impact in any way with the business operations of State Forests given that the price, species or quality for such logs from private property is not made available to State Forests.

12.3.14 State Forests is progressively introducing log merchandising for native forests and hardwood plantations. Under log merchandising State Forests undertakes to deliver specified timber directly to some sawmills. It does this by arranging long-term harvesting and haulage contracts with private sector providers through a competitive, open tender process.

12.3.15 The primary objective is to optimise the recovery of saleable log products from harvested areas, optimise allocation of logs in accordance with State Forests supply commitments and optimise safety outcomes, and to minimise total stump to mill supply chain costs.

12.3.16 Timber companies purchasing logs from State Forests under log merchandising arrangements are not required to hold a timber licence but instead a sale contract which confirms the commercial arrangements for harvesting and haulage of logs. In that case State Forests manages compliance of harvesting through contracts with contractors and operator's licences.

Threatened Species Act 1995

12.3.17 Approvals under this Act have been incorporated into the integrated approval process under the *Forestry and National Park Estate Act 1998* and the *Plantations and Reafforestation Act 1999.*

12.3.18 The *Threatened Species Act* applies equally to public and private forestry. A Parliamentary Joint Select Committee reported on the Act in 1997 following a statutory review of whether the policy objectives of the Act remained valid. The Committee recommended changes to the 8-part test (for determining whether an activity has a significant impact on threatened species). The NSW Government is presently considering amendments to the Act to be presented to Parliament in the second half of 2001.

Native Vegetation Conservation Act 1997

12.3.19 The Native Vegetation Conservation Act regulates all clearing on private land throughout NSW. Clearing is defined to include forestry although an exemption for sustainable forestry is currently in place. The Department of Land and Water Conservation (DLWC), which administers the Act, assesses clearing applications and monitors the extent of vegetation. It also prepares codes of practice and promotes best management practice in relation to native vegetation management and private forestry. DLWC is currently preparing a set of Best Operating Standards for Private Forest Logging as a Code of Practice under the Act. In addition the exemption for sustainable forestry is under review."

Fisheries

12.4 Regulatory Framework

12.4.1 The regulatory framework for the management and administration of fisheries in NSW is established by the *Fisheries Management Act 1994*. It sets out the broad legal powers and the head of power for achieving the Government's objectives. Detailed management rules are generally contained in subordinate legislation, particularly the

General Regulations, and management plans which relate more specifically to particular fisheries or activities.

12.4.2 The *Fisheries Management and Environmental Assessment Legislation Amendment Act 2000* provides for the environmental assessment of fishing activities; to restructure the management of commercial fisheries; to require recreational saltwater and freshwater fishers to pay a fishing fee and to make further provision for the protection of aquatic habitats.

12.4.3 Other legislation, considered later in this section of the report, includes the *Fisheries Act 1935*, *Fish Marketing Act 1994*, *Fish Marketing (Deregulation) Act 1997* and *Marine Parks Act 1997*.

12.5 Fisheries Management Act 1994

12.5.1 The *Fisheries Management Act 1994* is based on an ecologically sustainable approach to managing the fishery resource. The objects of the Act were amended in 1997 to strengthen the conservation provisions, and they remain the same today. The legislation aims to conserve, develop and share the resource by:

- licensing fishers and fish receivers;
- establishing fishery and season closures;
- imposing input controls on boats, gear, crew levels and fishing methods; and
- imposing output controls in the form of total allowable catches, share holdings in share-managed fisheries, bag and size limits and prohibitions on fishing certain species.

12.5.2 In late 1999, the NSW Government established a review committee to oversee a review of the *Fisheries Management Act*, including subordinate legislation and management plans, according to NCP criteria using the standard terms of reference for State-based reviews (see Annexure 1).

12.5.3 The review committee is chaired by NSW Fisheries and comprises representatives from The Cabinet Office, NSW Treasury, the Department of State and Regional Development, National Parks & Wildlife Service, and the Department of Land and Water Conservation.

12.5.4 The review committee commissioned the Centre for International Economics to prepare an Issues Paper that was distributed to members of ministerial advisory bodies and other interested parties in November 2000. The Issues Paper was also generally accessible on the Internet. Stakeholders were invited to lodge written submissions with the review committee.

12.5.5 The Centre for International Economics has also been commissioned to prepare a Final Report on the Act based on the public

consultation process. That report is currently being prepared for consideration by Cabinet. It is important to note that the review process has incorporated the provisions of the new *Fisheries Management and Environmental Assessment Legislation Amendment Act 2000*.

12.5.6 This NCP Review will supplement the broader statutory review completed by the Minister for Fisheries in November 2000 (under s.290 of the Act) and subsequently tabled in each House of Parliament. The statutory review concluded that the objectives of the *Fisheries Management Act* are valid and that its terms remain appropriate for securing those objectives.

12.6 Other Fisheries Legislation

12.6.1 The *Fisheries Act 1935* was largely repealed in 1999. It provided the legal framework for requiring commercial fishing and related activity operators to keep records and to furnish records when required to do so. The remaining sections of the Act provide for trout and salmon acclimatisation societies.

12.6.2 The *Fish Marketing Act 1994* was introduced to authorise the sale of the assets, rights and liabilities of the Fish Marketing Authority to the Sydney Fish Market Pty Ltd (a consortium of four fish marketing companies). This was done for the purpose of deregulating fish marketing and is regarded by NSW as a pro-competition measure.

12.6.3 The *Fish Marketing Amendment (Deregulation) Act* 1997 no longer exists, having been consolidated into the *Fish Marketing Act*.

12.6.4 Until recently, the marketing of fish in NSW was regulated under the *Fish Marketing Act* through fish cooperatives or the Sydney Fish Market. In some cases this required fish to be transported to the Sydney market and then back again to the local town for sale in fish shops or restaurants. This form of regulation ceased in November 1999, but receivers of fish for resale are still required to be registered under the *Fisheries Management Act 1994*.

12.6.5 The *Marine Parks Act 1997* is administered by the Marine Parks Authority and provides for the creation and management of marine parks. The provisions in this Act are similar to those granted in the *Fisheries Management Act 1994* for aquatic reserves. Because the effects of the aquatic reserves provisions are currently being reviewed as part of the review of the *Fisheries Management Act*, NSW does not intend to carry out a further review of the *Marine Parks Act*.

13 Mining

13.1 Legislation Review Update

Priority Reviews

Coal Mines Regulation Act 1982 and the Mines Inspection Act 1901

13.1.1 The CMRA regulates occupational health and safety in coal mines (and oil shale and kerosene shale mines) and certain related places. The MIA regulates the occupational health and safety of mines, other than coal and shale mines, and regulates the treatment of the products of such mines. In both cases, the costs associated with complying with occupational health and safety regulation may impact upon competition.

13.1.2 The NCP reviews of both the *Coal Mines Regulation Act 1982* (CMRA) and the *Mines Inspection Act 1901* (MIA) are being undertaken as part of broader full-scale reviews of these Acts.

13.1.3 Issue papers have been developed for both reviews by the Department of Mineral Resources. The issue papers contain a preliminary assessment of both Acts and their subordinate legislation in terms of NCP principles . For the CMRA, the Issues Paper was released in conjunction with a discussion paper associated with the full-scale review of the legislation. The MIA Issues Paper is expected to be released in early 2001, again, in conjunction with the release of a discussion paper associated with the full-scale review.

13.1.4 Issues raised in the NCP issue papers have been included in the full-scale review discussion papers for both Acts and consultation has and will strongly emphasise that social and environmental issues will be taken into account in any legislative reform, together with economic considerations.

13.1.5 Copies of both Issues Papers, inclusive of terms of reference for the NCP reviews, are (and soon will be in the case of the MIA) available from the Department's website at address: www.minerals.nsw.gov.au/ safety

13.1.6 The consultation referred to in the terms of reference is comprehensive and includes general public exposure through the full-scale reviews of the two Acts along with specific consultation through peak tripartite forums the Mine Safety Council, Coal Mine Safety Advisory Committee, Metalliferous Safety Advisory Committee and Extractive Industries Safety Advisory Committee. Membership of these bodies includes all major stakeholder groups from industry and unions together with Government.

13.1.7 Reform action and recommendations to address NCP in the legislation will be undertaken through the full scale review processes. The remaining milestones in the review of the MIA include the release of the Discussion Paper and Issues Paper in April 2001 (final submissions due by August 2001); the development of draft legislation by November 2001; and the introduction of new legislation in March/ April 2002. For the CMRA, the major remaining milestones include the release of a position paper and exposure bill around June 2001; further public consultation including issues of relevance to NCP; and new legislation introduced in late 2001/ early 2002.

Petroleum (Submerged Lands) Act 1982

13.1.8 The *Petroleum (Submerged Lands) Act 1982* relates to the exploration for, and exploitation of, petroleum resources and certain other resources adjacent to the coast of New South Wales.

13.1.9 A national review of the nation's petroleum (submerged lands) legislation was commissioned by the Australian and New Zealand Minerals and Energy Council (ANZMEC). The review was undertaken by ACIL Consulting Pty Ltd. Their report entitled: '*National Competition Policy Review of the Petroleum (Submerged Lands) Legislation*' was made public in May 2000.

13.1.10 A response to ACIL Consulting's recommendations was subsequently developed by an ANZMEC Review Committee comprising representatives from the governments of the Northern Territory, Victoria and the Commonwealth.

13.1.11 The Review Committee concluded that the legislation is free of significant anti-competitive elements that would impose net costs on the community. To the extent that there are restrictions on competition (for example, in relation to safety, the environment, resource management or other issues), these were considered to provide a net public benefit. The implementation phase will now commence, with a focus on administrative streamlining and measures to enhance the certainty and transparency of decision-making.

13.1.12 The Review Committee's response was subsequently endorsed by ANZMEC in August 2000. Both ACIL Consulting's report and the Review Committee's response can be accessed via the Commonwealth Department of Industry Science and Resource's website at address: www.isr.gov.au/ resources. New South Wales understands that copies of these documents have already been sent to the NCC.

14 Health and Pharmaceutical Services

14.1 Terms of Reference

14.1.1 The terms of reference for each review of health professional legislation are broadly similar. The terms of reference for the review of the *Nurses Act 1991* are indicative:

1. The New South Wales Department of Health will review the *Nurses Act 1991* in accordance with the terms for legislative review set out in the Competition Principles Agreement. The guiding principles of the review are that legislation should not restrict competition unless it can be demonstrated that:
   i. The benefits of the restriction to the community as a whole outweigh the costs; and
   ii. The objectives of the legislation can only be achieved by restricting competition.
2. Without limiting the scope of the review, the Department shall:
   i. clarify the objectives of the legislation and their continuing appropriateness;
   ii. identify the nature of the restrictions on competition;
   iii. analyse the effect of the identified restrictions on the economy generally;
   iv. assess and balance the costs and benefits of the restrictions; and
   v. consider alternative means for achieving the same results including non-legislative approaches.
3. When considering the matters in (2) the review should also identify potential problems, for consumers seeking to use nursing services, which need to be addressed by the legislation.
4. In addition to considering the matters identified above the Department will consider:
   i. the effectiveness of the current Act, in particular registration requirements and disciplinary arrangements; and
   ii. the interrelationship of the Act with the Health Care Complaints *Act 1993*.
5. The review will consider and take account of the relevant regulatory schemes in other Australian jurisdictions and any recent reforms or proposals for reform, including those relating to competition policy.

6. The Department will consult with and take submissions from health professions, relevant industry groups, Government and consumers.

14.2 Review Body and Consultative Mechanisms

14.2.1 Unless otherwise noted all reviews have been undertaken by the Department of Health's Legal and Legislative Services Branch.

14.2.2 Each review has involved the public release of an issues paper with particular attention given to obtaining the views of practitioners and their professional bodies, complaint handling bodies (eg the Health Care Complaints Commission) and consumer bodies (eg the Health Consumers Forum). Following a period of public consultation, generally lasting three to four months, a report with recommendations for the Government has been produced and following Cabinet approval released to the public. Key stakeholders have been extensively consulted during the drafting of any legislation.

14.3 Priority Areas

Chiropractors and Osteopaths

14.3.1 The Report of the review of the *Chiropractors and Osteopaths Act* was released in January 2000. The review recommended that both chiropractors and osteopaths continue to be registered by title although that registration be by separate Acts administered by separate registration boards. The review also recommended that the practice of spinal manipulation continue to be restricted with a definition of spinal manipulation and the restriction placed in the *Public Health Act*.

14.3.2 There are also modifications to the disciplinary system and a revision of restrictions on advertising so that the restrictions only target conduct that is false, misleading or deceptive or that encourages the unnecessary or inappropriate use of a practitioner's services.

14.3.3 The Government has agreed that the public interest requires continued regulation of chiropractors and osteopaths. Legislation has been drafted to implement the review's recommendations. It is expected that the legislation will be introduced in the Budget 2001 session of Parliament.

Dentists and Dental Paraprofessionals

14.3.4 The Issues Paper for the review of the *Dentist Act 1989* was released in August 1999. The Report of the review has been completed and submitted to the Government for approval.

Nurses

14.3.5 The Issues Paper for the review of the *Nurses Act 1991* was released in July 1999. The Report of the review has been completed and will be submitted for the Government's approval in the near future.

Optometrists

14.3.6 The Report of the review of the *Optometrists Act* was approved by the Government in December 1999.

14.3.7 The Report recommended that optometrists continue to be registered by title. The Report also recommended that the restriction on the practice of optometry be removed and replaced by a restriction on the prescribing of optical appliances. The Report recommends that the prescribing of optical appliances is to be restricted to optometrists and medical practitioners with orthoptists given a limited exemption to prescribe glasses where the patient has been examined and referred by a medical practitioner. It is recommended that the restriction be placed in the *Public Health Act* alongside the restriction on spinal manipulation. Other key recommendations in the Report are:

- removal of the restriction on optometrists accessing schedule 4 therapeutic drugs and the regulation of practice in this area via the *Poisons and Therapeutic Goods Act;*
- removal of the restriction on ownership of optometrical businesses;
- modifications to the disciplinary system; and
- a revision of restrictions on advertising so that restrictions only target conduct that is false, misleading or deceptive or that encourages the unnecessary or inappropriate use of a practitioner's services.

14.3.8 Draft legislation to implement the Review's recommendations was prepared and exposed to the profession as part of a consultation process. The Government has further considered the matter, in the light of this consultation, and has agreed to introduce legislation during 2001. The legislation will implement a number of important reforms. A full report on the matter will be provided in the Government's annual report to the NCC for the year ended 31 December 2001.

Pharmacists

14.3.9 The review of pharmacy legislation was conducted nationally through COAG. The review reported in late 1999. Implementation of the review is currently being considered by a working party which is due to report to COAG shortly. There is expected to be a coordinated national response to the review.

Physiotherapists

14.3.10 The Issues Paper for the review of the *Physiotherapists Act 1945* was released in September 1999. The Report of the review has been completed and has been submitted to the Government for approval.

Podiatrists

14.3.11 The Issues Paper for the review of the *Podiatrists Act 1989* was released in April 2000. The Department of Health is conducting further consultation in preparing the Report of the review.

Psychologists

14.3.12 The review of the *Psychologists Act 1989* has been completed. Legislation to implement the review's recommendations was introduced to Parliament in the spring session 2000. However as a result of concerns raised by the psychology profession the Bill has not proceeded. Further consultation has taken place with the profession and it is anticipated that legislation will proceed during the Budget 2001 parliamentary session.

Other Health Professions

14.3.13 New South Wales does not register the following professions:

- occupational therapists;
- radiographers (although there is a licensing system administered by the Environment Protection Authority);
- speech pathologists; and
- traditional Chinese medicine practitioners.

14.4 Non-Priority Areas

14.4.1 Line item reporting on the following legislation is contained in Annexure 2

Poisons and Therapeutic Goods Act 1992

Human Tissue Act 1983

Public Health Act 1991

Nursing Homes Act 1988

Private Hospitals and Day Procedures Centres Act 1988

15 Legal Services

15.1 Reforms in Recent Years

15.1.1 New South Wales tabled its report on the national competition policy review of the regulation of the legal profession in 1998.

15.1.2 The report of the review, and the implementation of the recommendations, should be considered against a background of the implementation of competition based reforms to the regulation of the legal profession since 1994.

15.1.3 The 1996 Report to the Council of Australian Governments (COAG) by the Legal Profession Working Group, entitled 'Reform of the Legal Profession in Australia', outlined key competition policy reforms to be implemented in all jurisdictions. The reforms have already been implemented in New South Wales and include provision for the national recognition of solicitors' and barristers' practising certificates; the independent monitoring of the complaints and discipline scheme, by the Legal Services Commissioner; fee deregulation, requirements for fee disclosure and flexible fee arrangements; and multi-disciplinary practices. Barristers in New South Wales can appear in court without a solicitor, clients can instruct a barrister directly, and the rights to practice of solicitors and barristers are co-extensive. Solicitors can use the title 'solicitor and barrister'. There are few restrictions on advertising, and the appointment of new Queen's Counsel was abolished some years ago.

15.2 Interstate Practitioners

15.2.1 Provisions have now been enacted in New South Wales, Victoria, South Australia, the Northern Territory, and the Australian Capital Territory, giving practitioners from those jurisdictions reciprocal rights of practice. The scheme at present extends only to solicitors and barristers from jurisdictions which have corresponding laws. The purpose of this requirement was to offer an incentive to Governments of all jurisdictions to offer the same rights to interstate practitioners. However, it is now over 4 years since the provisions were enacted in New South Wales. New South Wales is considering that the Act be amended to remove the need for a corresponding law to be passed in the state of origin of the solicitor or barrister, for an interstate practitioner to practise in New South Wales.

15.3 Incorporated Legal Practices

15.3.1 In 2000, a key recommendation of the NCP review was implemented, when the Legal Profession Amendment (Incorporated Legal Practices) Act was enacted. The amendments will enable

solicitors to practise and take instructions from members of the public from within corporate structures that have limited liability, and are governed by the Corporations Law. The reforms will facilitate multi-disciplinary practice, because in general any other person could practise with a solicitor as an employee of a company.

15.3.2 The Act does not restrict ownership of companies providing legal services. The Act is scheduled to commence during 2001, to allow time for regulations and insurance arrangements to be settled for incorporated practices. New South Wales will be the first Australian jurisdiction to allow such business structures.

15.4 Multi-disciplinary Practices

15.4.1 The NCP review recommended that the Solicitors' Rule, made by the Law Society Council, requiring a majority of solicitor members of multi-disciplinary partnerships, be reviewed. On 5 November 1999, the Law Society Council voted to remove the restrictions and a new rule took effect on 5 December 1999. New South Wales is the only jurisdiction to permit multi-disciplinary practice, free from restrictions on profit sharing.

15.5 Complaints and Discipline

15.5.1 The NCP review made some recommendations concerning the scheme for dealing with complaints and disciplining miscreant practitioners set out in the Act, although the report concluded that on the whole, the scheme serves the public interest.

15.5.2 To ensure that the statutory scheme and its operation are comprehensively reviewed, on 3 March 2000, the former Attorney General asked the Law Reform Commission to review the procedures for dealing with complaints under the Act. This response will incorporate consideration of the recommendations made in the NCP review.

16 Other Professional and Occupational Licensing

16.1.1 NSW has been active in reviewing occupational licensing arrangements and a number of reviews have either been completed or are in the process of being finalised.

16.1.2 NSW has already responded to fair trading reviews of professional and occupational licensing, enacting legislation to repeal the Hawkers Act 1974 and the Business Licences Act 1990 (*repealing Act assented to 4 April 2001 but not yet commenced*).

16.1.3 Reviews of the Motor Dealers Act 1974, Motor Vehicles Repair Act 1974, and the Property, Stock and Business Agents Act 1941, have been completed and are awaiting Cabinet consideration.

16.1.4 The National Review of the Travel Agents Act 1986 has also been completed and awaits consideration by the Ministerial Council on Consumer Affairs (MCCA). A NSW report responding to this national review is in preparation.

Progress on Fair Trading Reviews of Professional and Occupational Licensing

16.1.5 Fair Trading reviews of professional and occupational licensing are currently underway or awaiting Government consideration:

Conveyancers Licensing Act 1995	Final report is in preparation
Credit (Finance Brokers) Act 1984	Final report is in preparation
Employment Agents Act 1996	Final report is in preparation
Motor Dealers Act 1974	Awaiting Cabinet consideration
Motor Dealers Repair Act 1980	Awaiting Cabinet consideration
Pawnbrokers and Second Hand Dealers Act 1996	Final report is in preparation
Property, Stock and Business Agents Act 1941	Awaiting Cabinet consideration
Travel Agents Act 1986	National Review findings awaiting consideration by the Ministerial Council on Consumer Affairs

Refer to fair trading section of **Annexure 3 NSW Annual Report on Application of National Competition Policy – Status as at December 2000**.

16.1.6 Details on reviews of professional and occupational licensing reviews are provided below and are also referenced in **Table 16.1**.

16.1.7 The reviews covered below also include progress in reviewing occupations recommended for deregistration by the Vocational Education, Employment and Training (VEETAC) Working Party,

such as stock agents (*see review of the Property, Stock and Business Agents Act*) and motor mechanics (*see review of the Motor Repairs Act*). A more comprehensive list of progress to date is referenced in **Table 16.2**.

Conveyancers Licensing Act 1995

Impact on Competition

16.1.8 The *Conveyancers Licensing Act 1995* regulates the conduct of conveyancers in NSW by imposing various licensing requirements.

16.1.9 The legislation creates barriers to entry through licensing procedures governing the right to practise as a conveyancer. It also imposes ongoing licensing requirements for the conduct of conveyancing business, as well as compliance and discipline.

16.1.10 Specifically, the Act regulates legal work carried out by conveyancers in connection with transactions for the sale of land and other legal interests, such as personal property.

Review Process

16.1.11 Draft terms of reference, based on Clause 5 (9) of the Competition Principles Agreement were approved in 1999, and a Steering Committee was set up to conduct the review in early 2000.

16.1.12 The Steering Committee is being chaired by the Department of Fair Trading and comprises representatives from Attorney General's Department, The Cabinet Office, and NSW Treasury.

16.1.13 A Reference Group comprising consumer and industry representatives has also been formed to provide input throughout the review.

16.1.14 An Issues Paper was released in March 2000 and a series of meetings were held with industry and consumer representatives. The closing date for written submissions was in May 2000.

Review Recommendations

16.1.15 Final Report is in preparation.

Credit (Finance Brokers) Act 1984

Impact on Competition

16.1.16 The Act regulates the business conduct of finance brokers arranging credit contracts between credit providers and borrowers. Specifically, the Act regulates the conduct of finance brokers by

requiring the advertising of the licence name and address, requiring the keeping of records, and controlling when and how much commission is charged.

Review Process

16.1.17 The draft terms of reference, based on Clause 5 (9) of the Competition Principles Agreement were approved in 1999 and a Steering Committee was set up to conduct the review in early 2000.

16.1.18 The Steering Committee is being chaired by the Department of Fair Trading and comprises representatives from The Cabinet Office and NSW Treasury Corporation.

16.1.19 A Reference Group comprising consumer and industry representatives has also been formed to provide input throughout the review.

16.1.20 An Issues Paper was released in April 2000 and a series of meetings were held with industry and consumer representatives.

Review Recommendations

16.1.21 Final Report is in preparation.

Employment Agents Act 1996

Impact on Competition

16.1.22 The Act regulates the conduct of private employment agents in NSW through various licensing requirements.

16.1.23 The Act creates barriers to entry through licensing procedures, which require applicants to:

- be fit and proper to hold a licence;
- be at least 18 years of age; and
- have reasonably suitable premises for the business.

Review Process

16.1.24 The draft terms of reference, based on Clause 5 (9) of the Competition Principles Agreement were approved and a Steering Committee was formed in 2000.

16.1.25 The Steering Committee is being chaired by the Department of Fair Trading with representatives from relevant government agencies.

16.1.26 A Reference Group comprising consumer and industry representatives has also been formed to provide advice to the Steering Committee.

16.1.27 An Issues Paper was released in early 2000 to seek public comment by May 2000, and a series of meetings were held with industry and consumer representatives. A draft Final Report was finalised December 2000.

Review Recommendations

16.1.28 Final Report is in preparation.

Joint Review of the Motor Dealers Act 1974 and the Motor Vehicles Repair Act 1980

Impact on Competition

16.1.29 The *Motor Dealers Act 1974* creates barriers to entry by imposing restrictions on the granting of licences to motor dealers, wreckers, wholesalers, motor vehicle parts reconstructors, car market operators, motor vehicle consultants and prescribed businesses.

16.1.30 The Act requires the keeping of certain records and allows licences to be refused on several grounds, including:

- if the person does not have, or is unlikely to have sufficient financial resources to carry on the business;
- if the person is not likely to carry on such a business honestly and fairly;
- if the person does not have sufficient knowledge or experience; and
- if the applicant is not a fit and proper person.

16.1.31 The *Motor Vehicles Repair Act 1980* establishes the Motor Vehicle Repair Industry Council (MVRIC) and gives it licensing functions in relation to repair businesses, tradespeople and loss assessors.

16.1.32 The Act creates barriers to entry by requiring applicants for a Repairers' Licence to:

- be a fit and proper person to hold a licence;
- have qualifications or sufficient experience in a particular class of repair work; and
- have sufficient material, manpower and financial resources to carry on the business of a repairer.

Review Process

16.1.33 A Working Party supervised the initial stages of this joint review. Chaired by the Department of Fair Trading, it included representatives from the Office of the Minister for Fair Trading, The Cabinet Office, and the Chair of the Motor Vehicle Repair Industry Council.

16.1.34 The consultancy firm ACIL Economics and Policy Pty Ltd was engaged to assist the Working Party in undertaking the review.

16.1.35 The results of the review were considered by the NSW Government in April 2000.

16.1.36 In February 2001, the Minister for Fair Trading released an exposure draft Bill containing a number of key proposals arising from the review for public comment by March 2001.

Review Recommendations

16.1.37 The review made the following key recommendations, which have been incorporated into the draft exposure legislation:

Motor Dealers Act:

- *licensees under Dealers Act may operate from more than one place of business; and*
- registers of stock and prescribed parts will only need to kept at one place of business where multiple locations are operated by one licensee.

Motor Vehicles Repair Act:

- licensees may operate from more than one place of business, rather than having a separate licence for each premises;
- revision of repair work categories to take into account national training developments;
- prescribed qualifications required as a prerequisite to the grant of a tradesperson's certificate will be placed in a Regulation and subject to review; and
- aspects of the licensing scheme for motor vehicle repairers will be made consistent with the licensing scheme for motor dealers.

Policy Response

16.1.38 Stakeholder comments on the draft exposure Bill are currently being considered.

Pawnbrokers and Second Hand Dealers Act 1996

Impact on Competition

16.1.39 The Act regulates pawnbrokers and second-hand dealers by imposing various licensing requirements. A key rationale for regulating dealing in second-hand goods is the high risk of dealing in stolen goods.

16.1.40 The Act creates barriers to entry through licensing procedures, which require that applicants:

- be at least 18 years of age;
- not be an undischarged bankrupt; and
- have no convictions for offences involving dishonesty.

16.1.41 Licensees are also required to keep records of transaction details, including the name and identification details of customers and a description of the goods traded.

Review Process

16.1.42 The draft terms of reference, based on Clause 5 (9) of the Competition Principles Agreement were approved and a Steering Committee was set up to conduct the review in 1999.

16.1.43 The Steering Committee is being chaired by the Department of Fair Trading and comprises representatives from the Attorney General's Department, The Cabinet Office, and the NSW Police Department.

16.1.44 A Reference Group comprising consumer and industry representatives was also formed to provide advice to the Steering Committee.

16.1.45 An Issues Paper was released in April 2000, and a series of meetings were held with industry and consumer representatives. Written submissions closed in May 2000.

Review Recommendations

16.1.46 Final Report is in preparation.

Property, Stock and Business Agents Act 1941

Impact on Competition

16.1.47 The Property, Stock and Business Agents Act 1941 regulates the conduct of real estate, stock and station, business and managing agents in NSW.

16.1.48 The Act creates barriers to entry through licensing procedures, which require applicants to:

- be a fit and proper person to hold a licence; and
- have qualifications and sufficient experience for the desired class of licence(s).

16.1.49 The Act also prescribes how agents may carry on their businesses, and in particular how they are to handle trust funds.

Review Process

16.1.50 The draft terms of reference, based on Clause 5 (9) of the Competition Principles Agreement were approved and a Steering Committee was formed in 1997.

16.1.51 The Steering Committee is being chaired by the Department of Fair Trading and comprises representatives from The Cabinet Office, NSW Treasury, industry and consumer representatives.

16.1.52 The Steering Committee has been assisted by the Centre for International Economics and AT Cocks Consulting.

16.1.53 An Issues Paper was released in September 1997 and there has been extensive consultation with stakeholders, including public meetings in both metropolitan and regional centres.

Review Recommendations

16.1.54 Final Report was completed mid 2000.

Policy Response

16.1.55 The review process is not complete. The Final Report is yet to be publicly released – the report and related legislative proposals are awaiting Cabinet consideration.

Travel Agents Act 1986

Impact on Competition

16.1.56 The *Travel Agents Act 1986* regulates the conduct of travel agents through various licensing requirements.

16.1.57 The National Cooperative Scheme for the Regulation of Travel Agents is enacted in various Travel Agents Acts in participating states and the *Agents Act 1968* in the ACT. In NSW, the industry is regulated by the *Travel Agents Act 1986*.

16.1.58 The main potential restrictions on competition include:

- licensing (including qualification and experience requirements and 'fit and proper person' tests);

- compulsory membership of the Travel Compensation Fund (TCF) (with joining costs and annual fees); and
- compliance requirements with respect to participation in the TCF (costs associated with auditing and capital requirements).

Review Process

16.1.59 NSW is participating in a national review coordinated by the Ministry of Fair Trading in Western Australia.

16.1.60 The draft terms of reference, based on Clause 5 (9) of the Competition Principles Agreement were approved in November 1998.

16.1.61 The Ministerial Council on Consumer Affairs commissioned the Centre for International Economics to conduct the national review. An Issues Paper was released in June 1999 for extensive industry and community consultation.

16.1.62 In July 2000, the Ministerial Council agreed to release the draft Final Report for further consultation in late 2000.

16.1.63 In August 2000, COAG Senior Officials agreed that the Ministerial Council would be invited to consult the Commonwealth-State Regulatory Reform Committee (CRR). It is understood that advice has yet to be received from CRR.

Review Recommendations

16.1.64 The consultant's draft Final Report proposes a number of changes to travel agent legislation. The report's modelling suggests that the costs of regulation outweigh the associated public benefit.

16.1.65 The key recommendations are that:

- a competitive insurance scheme be implemented which would open up competition to the Travel Compensation Fund;
- some of the licensing requirements for agents be removed (such as qualification and experience requirements); and
- in the long term, deregulation of travel agents should be considered.

Policy Response

16.1.66 The NSW Government's response has not been completed. A report to the Ministerial Council on Consumer Affairs is in preparation.

Progress to be Monitored

16.1.67 Overall progress on reviews of professional and occupational licensing will continue to be monitored.

Professional Licensing (Chapter 18 of the NCC Assessment Framework)

Table 16.1 - Status of Occupational Licences

Occupation	Status
Motor Vehicle Traders	Currently under review (see Priority Reviews – Motor Dealers Act 1974)
Real Estate Agents	Review completed and awaiting consideration (see Priority Reviews – Property, Stock and Business Agents Act 1941)
Second hand dealers and pawnbrokers	Currently under review (see Priority Reviews - Pawnbrokers and Second Hand Dealers Act 1996)

Table 16.1 - Status of Occupational Licences (Con't)

Occupation	Status
Travel agents	Currently under review (see Priority Reviews – Travel Agents Act 1986)
Conveyancers	Currently under review (see Priority Reviews – Conveyancers Licensing Act 1995)
Employment agents	Currently under review (see Priority Reviews – Employment Agents Act 1996)
Hawkers	Hawkers Act repealed.
Property agents	Review completed and awaiting consideration (see Priority Reviews – Property, Stock and Business Agents Act 1941)

Table 16.2 - Status of Occupations VEETAC Working Party Recommended be Deregistered

Occupation	Status
Onsite residential property manager	Review completed and under consideration (see Priority Reviews – Property, Stock and Business Agents Act 1941).
Strata managing agent	Review completed and under consideration (see Priority Reviews – Property, Stock and Business Agents Act 1941).
Stock and station agent	Review completed and under consideration (see Priority Reviews – Property, Stock and Business Agents Act 1941).
Valuer	Review completed and report released (see Priority Reviews – Valuers Registration Act 1975).
Valuer licensed premises	Review completed and report released (see Priority Reviews – Valuers Registration Act 1975).
Loss Assessor (Motor Vehicle)	Requirement removed under Regulatory Reduction Act 1996.
Pawnbroker	Currently under review (see Priority Reviews - Pawnbrokers and Second Hand Dealers Act 1996).
Users of CFCs	Although issues by the Motor Vehicle Repair Industry Council this is a requirement under the Ozone Protection Act 1989 and is not listed for review by the Department of Fair Trading.
Motor mechanic	Currently under review. Exposure draft legislation released in February 2001. Stakeholder comments currently being considered (see Priority Reviews – Motor Vehicle Repairs Act 1980).
Motorcycle mechanic	Currently under review. Exposure draft legislation released in February 2001. Stakeholder comments currently being considered (see Priority Reviews – Motor Vehicle Repairs Act 1980).

Table 16.2 - Status of Occupations VEETAC Working Party Recommended be Deregistered (Con't)

Occupation	Status
Brake mechanic	Currently under review. Exposure draft legislation released in February 2001. Stakeholder comments currently being considered (see Priority Reviews – Motor Vehicle Repairs Act 1980).
Front end specialist	Currently under review. Exposure draft legislation released in February 2001. Stakeholder comments currently being considered (see Priority Reviews – Motor Vehicle Repairs Act 1980).
Body maker	Currently under review. Exposure draft legislation released in February 2001. Stakeholder comments currently being considered (see Priority Reviews – Motor Vehicle Repairs Act 1980).
Painter tradesman*	Currently under review. Exposure draft legislation released in February 2001. Stakeholder comments currently being considered (see Priority Reviews – Motor Vehicle Repairs Act 1980).
Panel Beater	Currently under review. Exposure draft legislation released in February 2001. Stakeholder comments currently being considered (see Priority Reviews – Motor Vehicle Repairs Act 1980).
Transmission specialist	Currently under review. Exposure draft legislation released in February 2001. Stakeholder comments currently being considered (see Priority Reviews – Motor Vehicle Repairs Act 1980).
Radiator repairer	Currently under review. Exposure draft legislation released in February 2001. Stakeholder comments currently being considered (see Priority Reviews – Motor Vehicle Repairs Act 1980).
Exhaust repairer	Currently under review. Exposure draft legislation released in February 2001. Stakeholder comments currently being considered (see Priority Reviews – Motor Vehicle Repairs Act 1980).
Automotive Electrician	Currently under review. Exposure draft legislation released in February 2001. Stakeholder comments currently being considered (see Priority Reviews – Motor Vehicle Repairs Act 1980).

* Although the National Competition Council notes in Table 18.2 that this licence is related to the general category of "Planning, building or developing service provider", in NSW this occupation relates to VEETAC licence 281.

17 Fair Trading Legislation and Consumer Legislation

17.1.1 NSW has made significant advances in fair trading and consumer legislation

17.1.2 NSW has been actively involved in reviewing a range of legislative arrangements that impose restrictions on various types of business conduct for the protection of consumers, such as compliance requirements for consumer credit provision and accuracy requirements for measuring goods in the market place.

17.1.3 NSW has already responded to four completed fair trading reviews by:

- repealing the Hawkers Act 1974.
- repealing the Business Licences Act 1990.
- abolishing the Prices Commission and transferring prices regulation powers to the Independent Pricing and Regulatory Tribunal (following review of the Prices Regulation Act 1948).
- retaining certain requirements for terminating the occupation rights of residents in retirement villages (Retirement Villages Act 1999).

17.1.4 Further details of the NSW Government's response to completed fair trading reviews are outlined in **Annexure 3: NSW legislation for which NCP review and reform activity was previously reported as being complete to the NCC**.

NSW Progress in Finalising Fair Trading Reviews

17.1.5 A number of fair trading reviews have been completed and await NSW Government consideration, including reviews of the Motor Dealers Act 1974, Motor Vehicles Repair Act 1974, the Property, Stock and Business Agents Act 1941, and the Co-operatives Act 1992 (section 43).

17.1.6 Other reviews are very close to completion and are currently being finalised, including reviews of the Fair Trading Act 1987, Credit (Finance Brokers) Act 1984, Conveyancers Licensing Act 1995, and Residential Tenancies Act 1987 (Final Reports in preparation).

17.1.7 Fair Trading reviews dealing with professional and occupational licensing are also underway, and a number of reviews have either been completed or are being finalised (refer Chapter 16).

17.1.8 Current progress on all fair trading reviews is outlined in **Annexure 2: NSW Annual Report on Application of National Competition Policy – Status as at December 2000 (refer Fair Trading section of table)**.

Priority Reviews

17.1.9 Priority areas for fair trading as part of the national competition policy review process are:

- fair trading legislation (ie, Fair Trading Acts);
- consumer credit legislation; and
- trade measurement legislation.

17.1.10 Relevant NSW Reviews comprise:

Fair Trading legislation	
Review of the Fair Trading Act 1987 and Door to Door Sales Act 1967	Final Report in preparation
Consumer Credit legislation	
Review of the Consumer Credit (New South Wales) Act 1995	Report completed December 2000; awaiting consideration.
Trade Measurement legislation	
Review of the Trade Measurement Act 1989	NSW is participating in a national review by the Ministerial Council on Consumer Affairs – still underway.

Fair Trading Legislation - Review of the Fair Trading Act 1987 and Door to Door Sales Act 1967

Impact on Competition

17.1.11 The *Fair Trading Act 1987* and *Door to Door Sales Act 1967* establish a framework for fair dealing in the marketplace to reduce risk associated with contractual dealings. The legislation places limits on market behaviour through compliance cost implications that the review is addressing.

17.1.12 The *Fair Trading Act 1987* regulates the supply, advertising and distribution of goods and services and in certain respects, the disposal of interests in land.

17.1.13 The *Door to Door Sales Act 1967* controls and regulates certain agreements relating to the sale or bailment of goods and the provision of services on credit. Agreements relating to the sale or bailment of goods and services on credit at the purchaser's home or place of work must be in clearly handwritten or typed and given to the purchaser. A cooling off period applies to unsolicited door to door sales on credit.

Review Process

17.1.14 The draft terms of reference, based on Clause 5 (9) of the Competition Principles Agreement were approved in late 1997 and a Steering Committee was formed in February 1998.

17.1.15 The Steering Committee is being chaired by the Department of Fair Trading and comprises industry and consumer representatives, as well as relevant government agencies such as the Australian Competition and Consumer Commission.

17.1.16 An Issues Paper was released to assist discussion in August 2000 and a series of public forums were held throughout New South Wales. This was followed up with individual meetings with interested parties.

Review Recommendations

17.1.17 Final Report is in preparation.

Consumer Credit Legislation - Review of the Consumer Credit (New South Wales) Act 1995

Impact on Competition

17.1.18 The Consumer Credit Code regulates the provision of consumer credit through state-based legislation which applies to all states and territories. In New South Wales, the Code is adopted through the *Consumer Credit (New South Wales) Act 1995*.

17.1.19 Specifically, the Code governs the provision of information and the conduct of credit providers in relation to the provision of consumer credit, including:

- information disclosure to debtors, guarantors and mortgagors at the pre-contractual stage, the contractual stage and throughout the life of the credit contract;

- notification of any changes under the credit contract to the debtor;
- redress mechanisms, where credit providers do not comply with the legislation;
- linked credit providers;
- related insurance contacts;
- advertising; and
- consumer leases.

17.1.20 The legislation is intended to counter two areas of market failure in the consumer credit industry:

- inadequate disclosure of information or information asymmetries between credit providers and consumers; and
- unfair or fraudulent conduct by market participants.

17.1.21 The main restrictions on competition in the Code are:

- disclosure requirements (such as requiring contracts to include certain information, requiring statements to be issued);
- product innovation restrictions (such as requiring credit to be provided in cash or money's worth, limiting the securities over which a mortgage may be created);
- potential compliance costs (such as requiring written notices to be given, civil penalties);
- discrimination between credit providers (potential costs are imposed on linked credit providers by attaching liability for representations made by a supplier to a debtor. These potential costs are not borne by credit providers that are not linked credit providers);
- third line forcing restrictions (suppliers are prohibited from requiring a buyer to apply for, or obtain, credit from a particular credit provider);
- pricing restrictions (commissions earned by credit providers for introducing customers to a particular insurer are limited to 20%); and
- conduct restrictions (such as regulating the content of advertisements and restricting credit providers from visiting a person at home for the purpose of inducing them to apply for credit).

Review Process

17.1.22 NSW is participating in a national review process which is being coordinated by the Ministerial Council on Consumer Affairs. The Queensland Office of Fair Trading is the lead agency.

17.1.23 The review is being conducted as the second stage of a post-implementation review of the Uniform Consumer Credit Code, which includes NCP analysis.

17.1.24 Consultants KPMG were engaged to conduct the review, with the Uniform Consumer Credit Management Committee acting as the Steering Committee.

17.1.25 Consultation for the review included release of an Issues Paper in early 2000 to interested stakeholders and posting of the paper on the national Consumer Credit Code website. Targeted consultations were also conducted with key industry associations and consumer advocacy groups.

17.1.26 Issues considered by the Post Implementation Review have included:

- whether the objectives of the Code are being achieved;
- the impact the Code has had on the marketplace, including the costs and benefits of any restrictions on competition;
- whether the legislation contravenes the competitive conduct rules in Part IV of the Trade Practices Act 1974 (Cth) and the Competition Codes of each jurisdiction; and
- opportunities for improving the national management structure for the Code.

17.1.27 The review has considered Government and market activities relevant to the objectives of the Consumer Credit Code, and:

a) reviewed existing definitions and exemptions contained in the legislation to determine whether they are appropriate to the objectives of the Consumer Credit Code.

b) assessed the need for the Consumer Credit Code having regard to the following fair trading outcomes:

- access to appropriate information to enable informed decisions to be made by participants;
- appropriate post contractual protection for consumers;
- provision of redress mechanisms for consumers;
- minimal restriction on product flexibility and consumer choice;
- minimal misleading, deceptive or unconscionable conduct by market participants; and
- minimal compliance costs for business.

c) considered future strategies that might influence those regulated by the Consumer Credit Code towards improved performance against fair trading outcomes.

d) considered the recommendation of the Ministerial Council on Consumer Affairs (MCCA) relating to the report of the Post Implementation Review of the Consumer Credit Code.

Review Recommendations

17.1.28 The consultant's report was completed in December 2000 but has not been publicly released.

Policy Response

17.1.29 The consultant's report is being considered.

Trade Measurement Legislation – Review of the Trade Measurement Act 1989

Impact on Competition

17.1.30 The Act regulates trade measurement in the marketplace, and includes provisions requiring verification of trade measuring instruments, certification of instruments and inspections throughout Australia.

17.1.31 The Act provides greater certainty in the marketplace but has compliance costs which may restrict competition.

Review Process

17.1.32 NSW is participating in a national review conducted by the Ministerial Council on Consumer Affairs, in accordance with COAG agreed terms of reference and methodology.

17.1.33 The review commenced in 1999 and the Queensland Office of Fair Trading is the lead agency for the review.

17.1.34 A "scoping study" examining the competition impacts of the legislation was conducted in early 2000. This study is currently being considered by jurisdictions to determine how the review should be progressed.

Review Recommendations

17.1.35 The review process is not complete.

17.1.36 Progress on all fair trading reviews, including these key priority reviews, will continue to be closely monitored.

18 Finance, Insurance and Superannuation Services

Compulsory Third Party Motor Insurance

18.1.1 New South Wales has competitive market arrangements for the provision of compulsory third party motor vehicle insurance. The NCC's third tranche assessment framework has not raised any issues regarding the status of NSW arrangements that require comment.

Workers' Compensation Insurance

18.1.2 In June 2000 the Minister for Industrial Relations announced the Government's Strategic Directions and Actions for the NSW Workers' Compensation Scheme;

18.1.3 The key issues to be addressed in the overall strategic review include the need:

- to maintain premiums at an affordable level and address the scheme deficit;
- to improve injury management processes and return to work outcomes;
- to develop benefit structures that provide adequate compensation to injured workers and promote return to work practices; and
- for an efficient dispute resolution system.

18.1.4 The Government has deferred the transition to private underwriting. It has adopted the position that further reforms need to be effected to reduce scheme costs and thereby reduce premiums to an affordable level to assist in any transition to private underwriting. It is noted that the recent collapse of the HIH Insurance Group has heightened interest in the exposure of statutory insurance schemes - including workers compensation - to the fortunes of commercial insurers. Had the scheme in NSW not been protected by Statutory provisions, the collapse of HIH would have resulted in approximately $800 million of workers compensation policies becoming unfunded liabilities. The Government will be considering this issue in any decision about a transition to private underwriting.

18.1.5 The first tranche of legislative reforms was passed by Parliament in December 2000. These reforms addressed issues related to injury management and dispute resolution. The WorkCover Authority is currently considering a range of options to gradually remove cross-subsidies in the existing premium rating scheme. This is intended to

ensure that the premium rates applied to specific industrial and business activities more closely reflect the cost of workers' compensation arising from those activities; and

18.1.6 A further reform package to reduce the number, duration and costs of claims was announced in April 2001 and legislation is expected during the year.

Trustee Companies

18.1.7 The one remaining area involving State regulation of financial markets (which was referenced in the Wallis Inquiry) relates to Trustee Companies. A revised regulatory framework incorporating nationally consistent provisions for trustee companies has long been on the agenda of the Standing Committee of Attorneys General (SCAG). The need for such a nationally consistent regulatory framework was also acknowledged by the Commonwealth/ States Working Party that negotiated the agreement for the prudential regulatory transfer in relation to the above financial institutions.

18.1.8 SCAG has commenced a national NCP review of State and Territory statutes pertaining to the regulation of trustee companies. An issues paper canvassing future regulatory options was released for public comment on 30 May 2001.

19 Retail Trading Arrangements

19.1.1 Part 4 of the *Factories, Shops and Industries Act 1962* regulates shop trading hours in New South Wales.

19.1.2 While the Act contains an array of rules for different types of shops selling different types of goods, the practice in NSW is much simpler. All shops in NSW can trade unrestricted from Monday to Saturday. Small shops can also trade unrestricted on Sundays and Public holidays. It is only general shops that are restricted from trading on Sundays and certain defined public holidays under the Act. In order to trade on Sundays, they must apply for an exemption. The Act also allows unrestricted trading hours on the last two Sundays before Christmas Day each year.

19.1.3 However, exemptions are widely in place for Sunday trading. Therefore, in practice, shop trading hours are largely deregulated in NSW.

19.1.4 The New South Wales Government has reviewed the legislation and concluded that the process in place for assessing applications to remove the few remaining locality-based restrictions on shop trading hours involves a satisfactory cost-benefit analysis of each individual case. The assessment and determination are made by the Director-General of the Department of Industrial Relations under the Act.

19.1.5 The Act does not contain specific statutory guidelines for assessing individual applications. However, the Department introduced a protocol in 1995 that requires the Department to invite comment from interested parties as part of the process of community and public consultation. This involves approaching local government authorities, retail industry associations, small business organisations in the affected areas, and the relevant trade union. The applicant shopkeeper is also required to provide information and data about the exemption sought, using guidelines developed by the Department.

19.1.6 Any shopkeeper who is aggrieved by a decision made by the Director-General may apply to the Administrative Decisions Tribunal (ADT) for a review.

20 Social Regulation with Implications for Competition

Child Care

20.1.1 Legislation relevant to the regulation of childcare services in NSW includes:

- the *Children (Care and Protection) Act 1987*;
- Chapter 12 of the *Children and Young Persons (Care and Protection) Act 1998;*
- the *Family Day Care and Home Based Child Care Services Regulation 1996;* and
- the *Centre Based and Mobile Child Care Services Regulation* (*No 2) 1996*.

20.1.2 Commercial childcare services in New South Wales are currently regulated under the *Children (Care and Protection) Act 1987*. However, Chapter 12 of the *Children and Young Persons (Care and Protection) Act 1998* will replace the existing regulatory provisions in mid to late 2001.

20.1.3 The NCC has identified the potential restrictions on competition in its Assessment Framework as being licensing requirements, which are linked to funding arrangements. In NSW, the detail of licensing requirements are contained in the aforementioned subordinate legislation.

20.1.4 As noted in the NCC's Third Tranche Assessment Framework, NSW did not schedule legislation in this area for NCP review.

20.1.5 The Government is currently redrafting the aforementioned regulations to support the provisions in the 1998 Act. The draft regulations will be released for public consultation as part of the regulatory impact statement (RIS) process established under the *Subordinate Legislation Act 1989*. The RIS, and related consultation process, will address the requirements of both NCP and the *Subordinate Legislation Act 1989*.

20.1.6 It is expected that this review process will ensure the removal of any unnecessary prescription in the current regulations.

21 Planning, Construction and Development Services

Reforming Planning, Land use and Natural Resource Approvals Systems

21.1.1 Planning, land use and building control issues are dealt with under the Environmental Planning and Assessment Act 1979. The Act has three principal parts that govern plan making, development and building control and environmental impact assessment.

21.1.2 The Government has looked at the operation of these principal parts of the Environmental Planning and Assessment Act as required under the Government's Policy Statement on Legislation Review. To address the inefficiencies identified in the Policy Statement comprehensive reforms of the development and building control as well as the process of plan making have been undertaken. There has not been a need for the review of the environmental impact assessment provisions as these are effectively just for activities carried out by the Crown which are not subject to the development approvals process.

21.1.3 The reform work of the Government in this area has been broader than the 30 projects listed in Attachment 2 of the Policy Statement. The success of the Government in removing the inefficiencies of the planning system identified in the Policy Statement is summarised in Annexure 4 of this report. The key areas of reform have been to the development and building control system and the plan making system. These reform projects are discussed below.

Reforms to the Development and Building Control System

21.1.4 Substantial reforms to the way that development and building proposals were handled started in July 1998. The details of the reforms have been discussed in previous reports from the Government, although it is important to remember that the reforms:

- integrated the development, subdivision and building approvals into the one process;
- adopted the performance based *Building Code of Australia 1996* across the State;
- allowed the private certification of building and construction compliance in competition. Councils were also able to compete with certifiers to provide these services;
- created a form of 'as-of-right' development called exempt and complying development; and

- created a process that involved State agencies in the development approval process and prevented inconsistent subsequent approvals.

21.1.5 These reforms have benefited from subsequent reforms and administrative transfers of responsibility. Examples include:

- the responsibility for the implementation of the *Building Code of Australia;* the reform of the development and building control process; the plan making process; and membership of the *Development Assessment Forum*, all now falling within the same area of the Department of Urban Affairs and Planning. This has enabled greater consistency between all these projects; and
- the addition of strata certification to the development and building control process. This has allowed accredited certifiers as well as councils to issue these certificates. This has had an immediate affect on both the price and timeframes for strata certificates, with significant benefits to the development industry

Implementation of the Development and Building Control Reforms

21.1.6 A report on the implementation of the reforms was provided in last year's report. A brief follow-up on these issues is provided below.

21.1.7 Complying development has now been introduced across the State, by way of local plans prepared by Councils or a default State policy gazetted in March 2000. These plans have provided for a conservative amount of development to be privately certified. However, the Government is working to expand the range of developments that can be certified and has had success in areas like Port Macquarie and is now working on the Western Sydney new release areas.

21.1.8 Numbers of accredited certifiers are increasing. There have been no new accreditation bodies approved, although one professional association has submitted a scheme for the Minister's consideration. The numbers of accredited certifiers are estimated to be just below 300. The market share of private certifiers continues to grow for large commercial and residential types of buildings.

21.1.9 A major review of the processes and procedures for development and building control (including assessment and certification) has been completed. The Environmental Planning and Assessment Regulation 2000 came into effect on 1 January 2001 following exhibition of a draft regulation and a regulatory impact statement. The new Regulation has allowed many procedural issues associated with the previous regulation to be streamlined.

21.1.10 The Government has agreed, in principle, with the recommendations of the Independent Pricing and Regulatory Tribunal on development assessment and related fees. Work is now proceeding to commence a review of the development assessment fees contained in the Environmental Planning and Assessment Regulation 2000. The proposals for fee reform are:

- fees subject to competition be de-regulated;
- default fees for non-contestable development assessment by 'consent authorities' be set by regulation; and
- qualifying consent authorities be allowed to set their own fee policies, provided their fee policies are acceptable to the Government; enable cost accounting and tracking; are based on benchmarked levels of service; and are subject to audit and review by the Government.

21.1.11 Ongoing monitoring of the reforms has indicated a need to develop clearer guidance on the role of private certifiers in the oversight of construction works and the compliance of these works with approvals. Provisions are being developed that will ensure that the respective roles of councils and certifiers in the management of compliance functions are clear. This is seen as a superior approach to providing confidence to the community about enforcement procedures than specifying that these functions are just to be carried out by councils.

Plan First – Reforms to the Plan Making Process

21.1.12 The Government has reached an advanced stage in the Review of Plan Making with the publication of a White Paper: Plan First – Review of Plan Making in February 2001. The White Paper outlines the Government's proposals for changes to plan making in New South Wales under the EP&A Act. The proposals for change have been widely discussed with stakeholders and build upon an earlier discussion paper released in February 1999 and a series of discussion forums and focus group meetings.

21.1.13 The White Paper sets out clear directions for modernising the planning system, while at the same time placing sustainability at the core of planning efforts.

21.1.14 Key changes that will be initiated by the proposed reforms include:

- a strategic, whole-of-government approach to environmental planning;
- regions and local areas planned and managed as whole places – not just a collection of issues, geographic features and land uses;
- plans and strategies that are outcomes-focussed;

- encouraging use of a greater diversity of planning tools and approaches;
- more effective consultation with the community throughout the plan preparation process;
- improving accessibility to planning information: plans written in plain language and available on the Internet;
- compulsory monitoring and review of strategies and plans; and
- strategies and plans founded on principles of sustainability

21.1.15 A companion document *Ideas for Community Consultation* has accompanied the White Paper in draft form with a view to further refinement and the ultimate production of a best practice guideline for conducting community consultation.

21.1.16 In the White Paper, a revised planning framework with a clear three-tier hierarchy is proposed. At the local, regional and state levels respectively, Local Plans, Regional Strategy, and a single document of State Planning Policies will replace the current hierarchy of State Environmental Planning Policies, Regional Environmental Plans, Local Environmental Plans and Development Control Plans.

21.1.17 A consolidated State Planning Policies document will bring together all State level policies relevant to environmental planning. Existing State Environmental Planning Policies, Ministerial directions and model provisions under the EP&A Act will be replaced with more comprehensive policies. The policies of other agencies that affect or influence planning will be included in this document. The proposal will strengthen the opportunities for other agencies to prepare State environmental policy on major issues that transcend regions (eg. salinity, biodiversity, minerals, climate change) and deliver these areas of policy through the environmental planning system.

21.1.18 The purpose of State Planning Policies is to set the context for spatial planning and decision making at regional and local levels. The proposal will provide a framework for planning policy outcomes for the State referenced to current best practice techniques. State Planning Policies will be regularly updated in response to changing circumstances.

21.1.19 The proposed Regional Strategies will be comprehensive, integrated environmental planning strategies for every region in NSW. They will incorporate relevant State Planning Policies and in turn inform the preparation of Local Plans. The purpose of Regional Strategies is to provide a context for local level actions and development decisions. Regional Strategies will provide a set of agreed goals within which State agencies and the non-government sector can

implement programs. Local government will be in a position to deliver and implement Local Plans.

21.1.20 Government policy relating to environmental planning and management will be contained in, or linked to, one whole of government Regional Strategy, so that all agencies are working towards achieving common outcomes for the region. Regional Strategies will be the principal environmental planning document for a region containing clear direction, commitments and accountabilities.

21.1.21 Regional Strategies will deal with a cluster of issues relating to that region. They will build on research and planning work already being undertaken by natural resource, economic and service delivery groups. They will give higher visibility to various non-statutory plans through linkages and consistent objectives. Issues such as water and vegetation will still be managed according to the landscape and boundaries of influence but the outcomes, strategies and targets contained in catchment management strategies, and vegetation and water management plans will be imported into the Regional Strategy.

21.1.22 The new Local Plan will consist of a single plan, containing all the planning controls applying to a parcel of land. This will replace requirements currently found in Local Environmental Plans and Development Control Plans as well as State and regional controls that sit separately. It will overcome one of the major shortcomings of the current system - the need to refer to many plans in order to determine the rights and obligations attached to a parcel of land.

21.1.23 The new Local Plan will be consistent with and implement the Regional Strategy. The Regional Forum will be required to provide advice to the Minister for Urban Affairs and Planning on a statement of regional consistency prepared by the council. The Minister for Urban Affairs and Planning will then advise the council whether the plan can be made.

21.1.24 A locality or place-based approach to local planning is advocated in the White Paper. Emphasis will be on assessing proposals according to the objectives and rules for the place. New Local Plans will use a mix of regulatory measures supplemented by a suite of non-regulatory tools to achieve quality outcomes and encourage the uptake of best practice environmental management.

21.1.25 In the future all plans will be available electronically. The Government is currently developing an intelligent planning framework for NSW called 'iPlan'. The aim is to provide integrated online planning information. Ultimately it will provide access to all the rules affecting regions and individual parcels of land. The Plan First framework has been developed to support this.

21.1.26 Plans at all levels will have to be regularly monitored and reviewed (refer to page 14 of the White Paper). All Local Plans will be required to include indicators and other measures to plot their achievement. These will be linked to regional level targets and indicators performing the same role at that level. By linking processes such as State of the Environment reporting to the targets set in plans and strategies, better monitoring of the cumulative effects of decisions and actions will take place.

Legislation Review

Local Government Act 1993

Stage 1

21.1.27 The *Local Government Act 1993* was subject to a statutory review during 1999. This was a general review to determine whether the policy objectives of the Act remained valid, and whether the terms of the Act remained appropriate for securing those objectives. This review addressed, as part of that process, a number of competitive neutrality issues. Following the tabling of a report of that review in Parliament in 1999, a bill providing for a number of amendments to the Act was passed by both Houses and was assented to on 20 December 2000 (the *Local Government Amendment Act 2000*). The commencement date or dates of the amendments made has yet to be proclaimed, but it is expected most of the amendments will come into force on 1 April 2001.

21.1.28 The *Local Government Amendment Act 2000* provides for the following amendments in relation to competitive neutrality issues:

(a) <u>The Purchase by Councils of Land at Auction</u>

This amendment is intended to remove a competitive disadvantage that Councils might otherwise face in competing with other private sector bidders at public auctions of land. Were it not for this amendment Councils would have had to disclose publicly in advance their intentions to seek to purchase the lands in question.

(b) <u>Council Waste Management Operations</u>

Previously, income earned by Councils from non-domestic waste management operations or services, which could be provided in competition with private sector operators, was calculated as part of the general income of Councils. This income was therefore subject to the rate pegging provisions of the Act, thereby limiting the ability of the Council to set its own prices for these services. The amendments will remove this constraint. The domestic waste management operations are already subject to separate rules that require cost recovery.

Stage 2

21.1.29 A second stage of the 1999 review is focusing on NCP matters, especially competitive neutrality. A committee comprising officers from the Department of Local Government (Chair), The Cabinet Office and NSW Treasury is undertaking this review.

21.1.30 A reference group has been established to provide specific stakeholder input to the conduct of the Review and its recommendations. The members of the Reference Group include representatives of relevant industry bodies, unions and professional organisations.

21.1.31 An issues paper was released for public comment in July 2000. It was widely circulated to interested parties, including members of the public and stakeholders identified as likely to be affected by the review. Submissions were due 1 September 2000. A total of 43 submissions were received and considered, including several late ones.

21.1.32 A draft report was prepared and comments received in respect of it from the Reference Group. As at 31 December 2000, the report was in the process of being finalised.

Service Providers

Architects

21.1.33 The NCC's Assessment Framework contains a useful summary of the national review of architecture legislation conducted by the Productivity Commission. The Treasurer publicly released the Commission's final report on the review in November 2000. State and Territory governments subsequently agreed to participate in a working group to develop a co-ordinated response to the review. The NSW Department of Public Works and Services is chairing the Working Group. The Working Group will present its suggested response to Premiers and Chief Ministers for consideration in mid 2001.

Surveyors

21.1.34 The *Surveyors Act 1929* provides the registration of surveyors. The Act restricts the use of the title 'registered surveyor' and provides that only registered surveyors can carry out boundary definition surveys in NSW. Boundary definition surveys. The Issues Paper for the review estimated that this represents about 20 - 40% of surveyors' work in multidisciplinary firms. In the case of sole

practising surveyors, this percentage is likely to be in the vicinity of 70-90%.

21.1.35 The *Surveyors (General) Regulation 1999* establishes the qualification requirements for registration. These include:

- a registration fee of $360 p.a;
- a minimum age of 21 years;
- being of good fame and character;
- holding a recognised university degree in surveying;
- passing a prescribed examination set by the Board of Surveyors and an oral test. The prescribed examination includes either four major projects of a "Professional Training Agreement"; and
- at least two years experience under the supervision of a registered surveyor or through a structured professional training agreement.

21.1.36 There are no restrictions on who can establish a firm of partnership of surveyors, other than the requirement that a registered surveyor must sign all boundary survey work.

21.1.37 The review is being undertaken by an independent consultant under the direction of a Steering Committee chaired by the Department of Information Technology and Management and with representation from The Cabinet Office. An Expert Advisory Group, comprising industry representatives, is assisting the review. The Steering Committee released an issues paper for public comment in December 2000. It can be accessed via www.ditm.nsw.gov.au.

Valuers

21.1.38 The *Valuers Registration Act 1975* provides the registration of valuers. The Act creates barriers to entry through registration procedures, which require applicants to have certain qualifications, sufficient experience and to be of good character.

21.1.39 Police checks are carried out on all applicants for registration to establish whether they have had any criminal convictions which would prevent them carrying out the duties of a real estate valuer.

21.1.40 The Act was reviewed by a Steering Committee chaired by the Department of Fair Trading and comprised representatives from The Cabinet Office, NSW Treasury and the valuation industry. An Issues Paper was released in May 1997 and public and industry representatives were consulted extensively.

21.1.41 The Steering Committee's Final Report, publicly released in May 2000, recommended that the current professional licensing scheme be replaced by a "negative" licensing system.

21.1.42 Under the proposed system, it would no longer be necessary for a valuer to be registered by the Department of Fair Trading. Instead it would be an offence for a person to work as a valuer unless he or she meets certain prescribed requirements eg, competency standards. Strong penalties would apply for any breaches.

21.1.43 The NSW Government has accepted the recommendations of the Review. Legislation is currently being prepared in consultation with stakeholders to repeal the Act and to modify the system for the regulation of valuers.

Electrical, Plumbing, Draining and Gas Fitting Work

21.1.44 NSW has recently initiated a comprehensive review of plumbing and drainage regulation.

Building Licensing Arrangements

21.1.45 The *Home Building Act 1989* regulates the entry of tradespersons into the residential building sector and stipulates the range of activities for which a licence must be obtained.

21.1.46 In September 1996 the Government released a Green Paper outlining various options for licensing of the building industry.

21.1.47 A Government Working Group chaired by the Department of Fair Trading was set up to review and consult relevant industry and community stakeholders.

21.1.48 The Final Report of this review was finalised in March 1998. It recommended a number of reforms to remove unnecessary components of the licensing system, subject to an assessment of the expected impact on the home warranty insurance scheme.

21.1.49 This report considered that much of the need for licensing would be eliminated due to the impact of the home warranty insurance scheme. However, during consultation, approved insurers advised that some licensing requirements are needed to underpin the insurance system.

21.1.50 In response to the Report, the NSW Government announced a comprehensive package of reforms in November 2000 for the home building industry covering licensing, home warranty insurance, dispute resolution, and building contracts.

21.1.51 An Issues Paper and draft exposure Bill were released in February 2001 for public comment by the end of March 2001.

21.1.52 The draft Bill proposes retaining the builders licensing system, as the home warranty insurance scheme is not yet able to keep out unscrupulous builders. The draft Bill proposes to tighten existing licensing arrangements and speed up the disciplinary process.

21.1.53 Stakeholder comments are currently being considered.

ANNEXURES

Annexure 1: NSW Template Terms of Reference for NCP Reviews

Annexure 2: NSW Legislation For Which NCP Review And Reform Activity Was Previously Reported To The NCC As Incomplete
Status as at December 2001

Annexure 3: NSW Legislation For Which NCP Review And Reform Activity Was Previously Reported To The NCC As Being Complete
Status as at 31 December 2000

Annexure 4: State Reviews Of Regulatory Restrictions On Competition - Planning, Land Use And Natural Resource Approvals Systems

Annexure 5: State Forests' of NSW Log Allocation and Pricing

Annexure 1

NSW Template Terms of Reference for NCP Reviews.

1 The review of the *(insert name of Act)* shall be conducted in accordance with the principles for legislation reviews set out in the Competition Principles Agreement. The guiding principle of the review is that legislation should not restrict competition unless it can be demonstrated that:

(a) the benefits of the restriction to the community as a whole outweigh the costs, and

(b) the objectives of the legislation can only be achieved by restricting competition.

2 Without limiting the scope of the review, the review is to:

(a) clarify the objectives of the legislation, and their continuing appropriateness

(b) identify the nature of the restrictive effects on competition

(c) analyse the likely effect of any identified restriction on competition on the economy generally

(d) assess and balance the costs and benefits of the restrictions identified, and

(e) consider alternative means for achieving the same result, including non-legislative approaches.

3 When considering the matters in (2), the review should also:

(a) identify any issues of market failure which need to be, or are being addressed by the legislation, and

(b) consider whether the effects of the legislation contravene the competitive conduct rules in Part IV of the *Trade Practices Act 1974* (Cth) and the NSW Competition Code.

4 The review shall consider and take account of relevant regulatory schemes in other Australian jurisdictions, and any recent reforms or reform proposals, including those relating to competition policy in those jurisdictions.

5 The review shall consult with and take submissions from *(describe stakeholders)* and other interested parties.

Annexure 2

NSW Legislation for Which NCP Review And Reform Activity Was Previously Reported To The NCC As Incomplete - Status as at December, 2001

Agriculture

Act	Potential Restrictions	Status
MIA Wine Grapes Marketing Board	Constitutes the MIA Wine Grapes Marketing Board - a statutory marketing authority responsible for the marketing of MIA wine grapes and to represent the interests of growers. The main restrictions were vesting and price setting powers. There have been two reviews carried out. The 'First Round' Review was completed in November 1996 and the 'Second Round' Review is nearing completion. The 'First Round' Review found that some of the Board's activities unnecessarily restricted competition. These activities included vesting and price setting powers. However, some activities, such as research, development and market promotion, were deemed to have the potential to correct market failure and thus provide a public benefit, such as overcoming under-investment in these activities. The 'Second Round' Review has not been completed.	**Complete.** Review process External review. Chaired by NSW Agriculture and comprising representatives of the Wine Grapes Marketing Board, the MIA Winemakers' Association, The Cabinet Office, NSW Treasury and NSW Agriculture. Recommendations The 'First Round' Review recommended that the Board's vesting power not be continued beyond 30 November 1996 and that the Board become an industry service organisation, using existing powers under the Marketing of Primary Products Act 1983. The 'Second Round' Review has not been finalised. Policy response The Government agreed to extend the Board's vesting power to 31 July 2000, subject to a number of constraints. To effect the changes, the Marketing of Primary Products Amendment (Wine Grapes Marketing Board) Act 1997 was passed. In March 2000 the Board submitted a detailed proposal to the NSW Government in relation to its powers and functions after July 2000. Assessment of whether these would comply with the principles of NCP is the subject of the Second Round Review.
Rice Marketing Board	The NSW Rice Marketing Board markets, or arranges to market, the annual rice crop in its role as the sole statutory marketing body for rice. This vesting power is the main competition restriction.	**Complete**. See chapter 11 for details.

Act	Potential Restrictions	Status
Murray Valley Citrus Marketing Act 1989 (complementary to *Murray Valley Citrus Marketing Act (Vic)*)	Makes provision for a joint NSW-Victorian scheme for marketing citrus fruit. The Murray Valley Citrus Marketing Board imposes a compulsory charge on citrus producers in the Murray Valley and has (unused) powers which enable it to set minimum quality standards and minimum prices.	**Underway.** Review Process Joint review between NSW and Victoria undertaken by consultants, Centre for International Economics, under the Victorian guidelines for NCP reviews. The review report was submitted to both governments in August 1999 and was also publicly released in August on the basis that it was not an endorsed government position. Extensive public consultation is being undertaken in developing a joint government response. Recommendations • Legislation should continue to underpin the operations of the Board • Core functions which provide benefits of a 'public good' continue to be funded by a compulsory levy where growers vote this to be beneficial • Any future legislation should clearly reflect the purpose of the Board in facilitating marketing and enhancing technological innovation. Policy Response Currently under Government consideration.
Dairy Industry Act 1979	The Act empowered the NSW Dairy Corporation to regulate the production, quality, supply and distribution of milk and the production, quality and storage of dairy products. The fundamental restriction on competition was the Corporation's vesting power, which facilitated the Corporation's pricing and supply management arrangements.	**Complete.** See chapter 11 for details.
Poultry Meat Industry Act 1986	Constitutes the Poultry Meat Industry Committee and defines its functions and regulates and controls the poultry growing industry. The main restriction is the requirement for contracts and grower fees to be approved by the Committee.	**Underway.** See chapter 11 for details.

Act	Potential Restrictions	Status
Horticultural Stock and Nurseries Act 1969	Restrictions include requirements for: • nurseryfolk and resellers of horticultural stock to be registered; • approval of sources of propagating material; • certification of schemes to control and regulate the growing of a class of proclaimed horticultural stock specified in the scheme; • labelling requirements; and • record keeping.	**Complete.** Review Process External Review: undertaken by an inter-departmental review group chaired by NSW Agriculture and with representation from industry (a nurseryperson, reseller, and an orchardist), and The Cabinet Office. Consultation included release of an Issues Paper and call for public submission and several public meetings on the Issues Paper. Recommendations The review recommended that the Act be repealed and provisions of the Act that relate to disease control be incorporated into the *Plant Diseases Act 1924* and that an industry service committee be established under the *Agricultural Industry Services Act 1998*. Policy Response The Government agreed to implement all the Review recommendations. The Act was repealed in December 2000 and the Government is working with the industry to establish an industry service committee.
Rural Lands Protection Act 1988	Establishes Rural Lands Protection Districts and associated boards that levy and collect rates, provide animal health services and control of noxious weeds and animals. The Review Group is yet to identify potential restrictions on competition. .	**Underway.** Review Process External Review. Joint Industry and Government committee comprising representatives of the State Council of Rural Lands Protection Boards, a Rural Lands Protection Board minimum ratepayer, NSW Farmers Association, NSW Treasury and The Cabinet Office. Recommendations The Review Group is yet to report.
Apiaries Act 1985	The Act requires beekeepers to register, with fees; prohibits the sale of disposal of diseased bees or appliances, or importing of bees likely to spread diseases. Bees must be kept in identified hives; beekeeping on premises can be prohibited or restricted; and inspectors can enter and inspect premises.	**Underway.** Review Process External review, including release of an Issues Paper and public submissions. Review chaired by NSW Agriculture and comprising representatives of the NSW Farmers' Association, Rural Lands Protection Boards, NSW Agriculture, The Cabinet Office and NSW Treasury. Recommendations Report yet to be completed.

Act	Potential Restrictions	Status
Cattle Compensation Act 1951	The Act provides for the levy of a rate by Rural Lands Protection Boards with the proceeds of the levy being payable to the Cattle Compensation Fund and provides for payment of compensation to owners of cattle and carcasses of cattle destroyed because of disease.	**Review Unnecessary.** The Government introduced legislation to repeal the Act in February 2001.
Exotic Diseases of Animals Act 1991	The Act requires compulsory reporting of disease outbreaks; prohibits or restricts the movement of animals, animal products and vehicles; provides compensation for animals destroyed for disease-control; bans introduction into the State of certain animals; and allows for destruction orders; empowers inspectors to enter and search and premises, and test and disinfect animals.	**Underway.** Review Process Part of a generic review of all disease legislation. External review, including release of an Issues Paper and public submissions. Chaired by NSW Agriculture and comprising representatives of the NSW Farmers' Association, Rural Lands Protection Boards, NSW Agriculture, The Cabinet Office and NSW Treasury. Recommendations Report yet to be completed.
Banana Industry Act 1987	The Act empowered the Banana Industry Committee (BIC) to regulate the quality of bananas produced in NSW and their subsequent transport to major intrastate markets. The BIC was also able to impose compulsory charges on growers to fund industry service functions.	**Complete.** Review Process External review. Chaired by NSW Agriculture and comprised representatives of the Banana Industry Committee (BIC), NSW Agriculture, The Cabinet Office and NSW Treasury. Recommendations The Review recommended the removal of the BIC's power to regulate the marketing and transport of bananas. Policy Response The Government enacted the Banana Industry Amendment Act 2000 which: • allowed the retention of the BIC's power to provide industry service functions and impose compulsory charges on banana growers to fund these service functions; • removed some obsolete and unexercised powers of the BIC, and • removed the BIC's transport direction power.

Act	Potential Restrictions	Status
Plant Diseases Act 1924	The Act permits declaration of quarantine areas; establishment of quarantine stations for plants; and allows control of the storage and movement of some items. Inspectors have powers to enter and search premises, and seize and destroy plants.	**Underway.** Review Process Part of a generic review of all disease legislation. External review, including release of an Issues Paper and public submissions. Chaired by NSW Agriculture and comprising representatives of the NSW Farmers' Association, Rural Lands Protection Boards, NSW Agriculture, The Cabinet Office and NSW Treasury. Recommendations Report yet to be completed.
Stock Diseases Act 1982	The Act provides for declaring diseases to be subject to the Act; restricting or prohibiting imports of stock or other items from a disease affected area. The Act allows declaration of quarantine areas; testing and treatment of stock; closing of roads and building of fences and gates; declaring quarantine lines and setting conditions for crossing such lines; and ordering destruction of stock.	**Underway.** Review Process Part of a generic review of all disease legislation. External review, including release of an Issues Paper and public submissions. Chaired by NSW Agriculture and comprising representatives of the NSW Farmers' Association, Rural Lands Protection Boards, NSW Agriculture, The Cabinet Office and NSW Treasury. Recommendations Report yet to be completed.
Swine Compensation Act 1928	The Act provides for a Swine Compensation Fund, and provides for payment from the fund of compensation, expenses and expenditure for approved research on pig diseases and to reimburse Rural Lands Protection Boards for certain expenditure.	**Underway.** Review Process Part of a generic review of all disease legislation. External review, including release of an Issues Paper and public submissions. Chaired by NSW Agriculture and comprising representatives of the NSW Farmers' Association, Rural Lands Protection Boards, NSW Agriculture, The Cabinet Office and NSW Treasury. Recommendations Report yet to be completed.

Act	Potential Restrictions	Status
Stock Foods Act 1940	The Act, regulates labelling of manufactured stock food; and composition standards for stock food (limits on foreign ingredients).	**Underway.** Review Process External Review. A joint industry and Government committee comprising representatives of the NSW Farmers Association, the National Meat Association (NSW Division), NSW Health, the Environment Protection Authority, NSW Agriculture and The Cabinet Office. This was a concurrent review of all chemical residue related legislation including: the Fertilisers Act 1985, Stock Foods Act 1940, Stock Medicines Act 1989, Stock (Chemical Residues) Act 1975 and Part 7 of the Pesticides Act 1978. The Review Group completed its report in December 1999. Recommendations Currently under Government consideration.
Stock (Chemical Residues) Act 1975	The Act imposes restrictions on stock detected, or suspected of being chemically affected.	**Underway.** Review Process External Review. A joint industry and Government committee comprising representatives of the NSW Farmers' Association, the National Meat Association (NSW Division), NSW Health, the Environment Protection Authority, NSW Agriculture and The Cabinet Office. This was a concurrent review of all chemical residue related legislation including: the Fertilisers Act 1985, Stock Foods Act 1940, Stock Medicines Act 1989, Stock (Chemical Residues) Act 1975 and Part 7 of the Pesticides Act 19678. The Review Group completed its report in December 1999. Recommendations Currently under Government consideration.
Stock Medicines Act 1989	The Act prohibits possession of certain stock medicines; controls the use of registered and unregistered stock medicines; controls the prescription or supply by veterinary surgeons; requires notification of unexpired withholding periods; requires disclosure of information on stock food treated with a stock medicine; and restricts advertising.	**Underway.** Review Process External Review. A joint industry and Government committee comprising representatives of the NSW Farmers' Association, the National Meat Association (NSW Division), NSW Health, the Environment Protection Authority, NSW Agriculture and The Cabinet Office. This was a concurrent review of all chemical residue related legislation including: the Fertilisers Act 1985, Stock Foods Act 1940, Stock Medicines Act 1989, Stock (Chemical Residues) Act 1975 and Part 7 of the Pesticides Act 19678. The Review Group completed its report in December 1999. Recommendations Currently under Government consideration.

Act	Potential Restrictions	Status
Noxious Weeds Act 1993	The Act requires control of declared noxious weeds; restricts the sale of declared noxious weeds; restricts movement of material containing notifiable noxious weeds; requires cleaning and inspection of agricultural machinery at the Queensland border; and regulates the supply of materials, equipment and services by local control authorities.	**Underway.** Review Process External review, including release of Issues Paper and public submissions. Chaired by NSW Agriculture and comprising representatives of the NSW Farmers' Association, the Nature Conservation Council, the Rural Lands Protection Boards, Total Catchment Management, the National Trust, the Department of Land and Water Conservation, Local Government and Shires Association and NSW Agriculture. The review report was completed in October 1998. Recommendations Currently under Government consideration.
Seeds Act 1982	The Act imposes labelling requirements on seed parcel sales and sets standards and conditions which limits participation in seed varietal verification schemes.	**Underway.** Review Process Internal review, but with consultation with other States on similar legislation. Recommendations Report yet to be completed.
Prevention of Cruelty to Animals Act 1979	The provisions of the Act and its subordinate regulations impact upon a range of activities concerned with animal breeding, animal husbandry, entertainment, veterinary services, animal derived production and processing and transportation. These may restrict competition in three ways: either by controlling or prohibiting certain activities; by imposing compliance costs; or, by authorising a range of direct interventions by regulatory officials and courts.	**Underway.** Review Process Internal Review. The Review Group consists of members of NSW Agriculture. An issues paper inviting submissions, was sent to relevant organisations in March 2001. The Review Group is required to give consideration to the relationship between this Act and related legislation. Five Acts were identified as being relevant: *Animal Research Act 1985*, *Exhibited Animals Protection Act 1986*, *Veterinary Surgeons Act 1986*, *Companion Animals Act 1998* and *National Parks and Wildlife Act 1974*. Recommendations The Review Group is yet to report.

Act	Potential Restrictions	Status
Agricultural Tenancies Act 1990	The Act regulates the rights of agricultural landowners, tenants and sharefarmers and other tenant related issues, where the farmers have not made their own agreements; and provides for determination of disputes by compulsory arbitration.	**Complete.** Review Process Internal review, including release of an Issues Paper. The review was completed in November 1999. Recommendations That the objectives of the Act be rewritten so that they: • are environment protection, achieving certainty in tenancy agreements, and dispute resolution; • provide for referral of the parties to mediation prior to an arbitration commencing; and • provide for referral of disputes to courts of competent jurisdiction and for appeals to the Administrative Decisions Tribunal. Policy Response A Bill to implement these changes was introduced to Parliament in March 2001. The Bill passed Parliament in April 2001.
Farm Debt Mediation Act 1994	The Act requires creditors to undertake mediation if a farmer chooses to exercise this statutory right; and requires that the mediator must be accredited.	**Underway.** Review Process External review, including release of Issues Paper and public submissions. Chaired by NSW Agriculture and comprising representatives of the NSW Farmers' Association, the Australian Bankers Association, the New England Rural Counselling Service, the NSW Rural Assistance Authority, NSW Agriculture and The Cabinet Office. The review was completed in December 2000. Recommendations Currently under Government consideration.

Act	Potential Restrictions	Status
Agriculture and Veterinary Chemicals Act 1994	Applies certain laws of the Commonwealth relating to agricultural and veterinary chemical products as laws of NSW. Complementary to Commonwealth legislation. Potential restrictions on competition in the *Agricultural and Veterinary Chemicals Act 1994* include: • the licensing and registration requirements which restrict entry to the agvet chemical manufacturing market and in some situations provide a competitive advantage to existing manufacturers; • the requirement for agvet chemical spray contractors to hold various forms of business licenses or accreditations; • exemptions for veterinary surgeons from provisions relating to supply and use, which are discriminatory; • a legislative monopoly where the National Registration Authority is the single provider of registration decisions; • the regulation of product standards; and • the associated compliance obligations which may impose substantial costs and restrict new entrants to the market.	**Underway**. See Chapter 11 for details.
Grain Marketing Act 1991	The power to vest declared commodities is considered to be the primary restriction on competition in the Act.	**Complete.** See Chapter 11 for details.

Act	Potential Restrictions	Status
Exhibited Animals Protection Act 1986	The Act restricts competition through requirements for licences and permits, with fees; restricts breeding and trading of some animals; imposes best practice welfare standards; and imposes requirements for educational components.	**Underway.** Review Process External review, including release of Issues Paper and public submissions. Chaired by NSW Agriculture and comprising representatives from the National Parks and Wildlife Service, Zoos and Wildlife Parks, Herpetologists, the Non-Indigenous Animals Advisory Committee, the Exhibited Animals Advisory Committee and NSW Agriculture. The Act was reviewed concurrently with the *Non-Indigenous Animals Act 1987* as a combined "*Review of the legislation controlling the keeping and movement of exotic animals and the keeping of animals for public display*". Recommendations Report yet to be completed.
Non Indigenous Animals Act 1987	The Act restricts competition by licences and permits, with payment of fees, restrictions on trading of higher-risk exotic animals and security standards.	**Underway.** Review Process External review, including release of Issues Paper and public submissions. Chaired by NSW Agriculture and comprising representatives from the National Parks and Wildlife Service, Zoos and Wildlife Parks, Herpetologists, the Non-Indigenous Animals Advisory Committee, the Exhibited Animals Advisory Committee and NSW Agriculture. The Act was reviewed concurrently with the *Exhibited Animals Protection Act 1986* as a combined "*Review of the legislation controlling the keeping and movement of exotic animals and the keeping of animals for public display*". Recommendations Report yet to be completed.
Animal Research Act 1985	The Act regulates the carrying out of animal research and the supply of animals for research. The Act requires that authorisations may only be granted for recognised research purposes involving research, teaching, testing and the production of biological products.	**Underway.** Review Process External review, including release of Issues Paper and public submissions. Chaired by NSW Agriculture and comprising representatives from the Australian Pharmaceutical Manufacturers' Association, the NSW Vice Chancellors' Conference, the Humane Society International, the Animal Societies Federation, the RSPCA, the Animal Research Review Panel, NSW Agriculture, The Cabinet Office and NSW Health. Recommendations Report yet to be completed

Act	Potential Restrictions	Status
Rural Assistance Act 1989	Constitutes the NSW Rural Assistance Authority. The Review Group considered the Protection Orders provision to be a potentially significant competition restriction.	**Complete.** Review Process External review. Chaired by NSW Agriculture with representatives of NSW Rural Assistance Authority, NSW Treasury, NSW Agriculture, The Cabinet Office, Department of Land and Water Conservation, NSW Farmers Association and Rural Financial Counsellors. The review report was completed in February 1999. Recommendations • Public benefit provisions should be included in the Act to apply to existing and new programs. • Programs to include objectives that clearly target defined market failure(s). • Provisions relating to the Protection Orders be repealed. Policy Response Consistent with the Review's recommendations, the current arrangements were retained with minor amendments to the Act including the repeal of Protection Orders. These changes were effected by the Rural Assistance Amendment Act 2000, which commenced January 2001. The functions and operations of the NSW Rural Assistance Authority remain unchanged.
Veterinary Surgeons Act 1986 (1) Stock (Artificial Breeding) Act 1985 (2)	(1) Regulates veterinary surgeons and premises; defines acts to be performed by vets; establishes the Veterinary Surgeons Board and disciplinary procedures; controls delegation of duties; regulates advertising and use of the title 'Veterinary Surgeon'. (2) The Act requires that only veterinary surgeons or persons with the prescribed qualifications, may carry out or supervise an artificial breeding procedure; it requires licensing of artificial breeding premises; and imposes mandatory standards on licensed premises.	**Underway.** Review Process Concurrent review of both Acts. External Review comprising representatives of the NSW Veterinary Surgeons Board, consumers of veterinary services, animal welfare interests, NSW Treasury, NSW Agriculture and The Cabinet Office. The review report was completed in December 1998. Recommendations Currently under Government consideration.

Attorney-General

Act	Potential Restrictions	Status
Public Trustee Act 1913	Establishes the Public Trustee as a corporation empowered to conduct personal trust work.	**Complete.** Recommendations Corporatisation of the Public Trustee Policy Response Legislation was rejected by Parliament. Other measures to implement review recommendations are under consideration.
Trustee Companies Act 1964	Consolidates and amends the law relating to the restrictions, liabilities, privileges and powers of trustee companies.	***Underway.*** Review Process National Review by SCAG.
Legal Profession Act 1987	Regulates the admission and practice of barristers and solicitors and repeals the *Legal Practitioners Act 1898*. Constitutes the Barristers Admission Board and Legal Practitioners Admission Board.	**Underway.** Review Process Review Committee chaired by Attorney-General's Department. Issues Paper released for public comment Report tabled in Parliament in November 1998 Recommendations Policy Response See Chapter 15. Implementation is underway. So far: • rule requiring solicitors to have majority control of multidisciplinary practices abolished. • Act to allow solicitors to incorporate to commence in 2001.
Partnerships Act 1892	To declare and amend the law of partnership.	**Underway.** Review Process By Attorney Generals' Department.

Act	Potential Restrictions	Status
Council of Law Reporting Act 1969	Constitutes a Council of Law Reporting to New South Wales and defines its powers, authorities, duties and functions.	**Complete.** Review Process Internal review by Attorney General's Department. Recommendations Act to be retained, but administrative changes to introduce competitive tendering for licence to publish reports. Publication of on-line reports open to any one for a fee. Policy Response Recommendations implemented
Professional Standards Act 1994	Provide for the limitation of liability of members of occupational associations in certain circumstances and to facilitate the improvement of the standards of services provided by those members.	**Underway.** Review Process This review commenced in February 2000. It is being undertaken by a steering committee chaired by the Attorney General's Department and comprising representatives from The Cabinet Office and the Department of Fair Trading. An Issues Paper will be released in June 2001 calling for public submissions. Targeted consultation with key stakeholders will follow. The review will also satisfy the requirement under s.55 of the Act for a statutory review to be completed and a report tabled in both Houses of Parliament by December 2001. Recommendations Issues Paper in preparation.
Theatres and Public Halls Act 1908	Provides for the licensing and regulation of theatres and public halls and of places used for public entertainment or public meetings, and the licensing and regulation of the holding of public entertainment and public meetings in temporary structures.	**Not commenced.** Policy Response Likely repeal in 2001.

Energy

Act	Potential Restrictions	Status
Pipelines Act 1967	Relates to the construction, operation and maintenance of pipelines.	**Complete.** See Chapter 5 for details (paragraphs 5.1.12-5.1.13).
Electricity Safety Act 1945	• Provides for the development of electricity supply; • Confers certain powers, authorities, duties and functions on the Energy Corporation of NSW; • Establishes an authorisation and inspection regime for electrical products; and • Regulates the sale and hiring of electrical apparatus; and • Amends certain Acts.	**Underway.** Refer below to Fair Trading in Annexure 2.
Electricity Supply Act 1995	Regulates the supply of electricity in the wholesale and retail markets; sets out the functions of persons engaged in the conveyance and supply of electricity.	**Not commenced.** Because of the major amendments to the *Electricity Supply Act* which have, and are, taking place, it is not intended that a review of the Act will be undertaken under the auspices of the NCP Agreement.

Environment

Act	Potential Restrictions	Status
Pesticides Act 1978	Part 7 of the *Pesticides Act* place restrictions on the movement and/ or sale of certain foodstuffs.	**Complete.** Review Process Dealt with under the Licence Reduction Program. However, Part 7 of the Act is currently subject to further review in the context of a generic review of several Acts dealing with chemical residues (see Agriculture section). The review report is complete and awaits Government consideration
Radiation Control Act 1990	Makes provision for the regulation and control of the sale, use, keeping and disposal of radioactive substances and radiation apparatus.	**Complete.** Review Process Initially dealt with under the Licence Reduction Program. However a national review of radiation control legislation may have implications for this Act. The national review is being co-ordinated by the Australian Radiation Protection and Nuclear Safety Agency. A draft report has been prepared.

Act	Potential Restrictions	Status
Waste Minimisation and Management Act 1995 and the waste provisions of the Protection of the Environment Operations Act 1997	The Act relates to the management, regulation and reduction of waste. Potential restrictions on competition include: • the powers of regional waste boards to direct councils' charging policies; • requirements for industry waste reduction plans; • licensees that are not public authorities cannot hold licences for facilities that receive putrescible waste, unless a separate supervisory licence is granted to a public authority; • environmental protection licensing; and • the waste levy.	**Underway.** Review Process The review is being conducted by a working group comprising representatives from the Environment Protection Authority (chair), The Cabinet Office and Treasury. The Working Group has released an Issues Paper in June 2000 and is currently finalising its report to the Minister.

Fair Trading

Act	Potential Restrictions	Status
Trade Measurement Act 1989	Regulates trade measurement in the marketplace, and includes provisions requiring verification of trade measuring instruments, certification of instruments and inspections throughout Australia.	**Underway** *Refer priority reviews in Chapter 17, Fair Trading Legislation and Consumer Legislation.*
Building Services Corporation Act 1989 Superceded by the Home Building Act (below)	Regulated the residential building industry and certain specialist work, and provided for the establishment of the Building Services Corporation (BSC) to oversee the industry.	**Underway** Review Process An Issues Paper was released for comment in September 1996, and public meetings were subsequently held across the State. Recommendations That the current licensing system be enhanced to provide a greater level of protection for consumers and a simpler system for builders. Policy Response Various building industry reforms were announced in November 2000. Legislative changes arising from the review have included abolition of the BSC, as well as the privatisation of compulsory insurance. Additional reforms to occupational licensing are under consideration. Stakeholder comments on an exposure draft Bill are currently being considered (*see further comment under the Home Building Act - below*).

Act	Potential Restrictions	Status
Home Building Act 1989 Builders' Licensing Act (superceded by the Home Building Act 1989)	Regulates the entry of tradespersons into the residential building sector and stipulates the range of activities for which a licence must be obtained.	**Underway** Review Process In September 1996 the Government released a Green Paper outlining various options for licensing of the building industry. A Government Working Group chaired by the Department of Fair Trading was set up to review and consult relevant industry and community stakeholders. The Final Report of this review was finalised in March 1998. Recommendations The 1998 Report recommended a number of reforms to remove unnecessary components of the licensing system, subject to an assessment of the expected impact on the home warranty insurance scheme. This report considered that much of the need for licensing would be eliminated due to the impact of the home warranty insurance scheme. However, during consultation, approved insurers advised that some licensing requirements are needed to underpin the insurance system. Policy Response • In November 2000, the NSW Government announced a comprehensive package of reforms for the home building industry covering licensing, home warranty insurance, dispute resolution, and building contracts. • An Issues Paper and draft exposure Bill were released in February 2001 for public comment by the end of March 2001. • The draft Bill proposes retaining the builders licensing system, as the home warranty insurance scheme is not yet able to keep out unscrupulous builders. The draft Bill proposes to tighten existing licensing arrangements and speed up the disciplinary process. • Stakeholder comments on the draft exposure Bill are currently being considered.
Door to Door Sales Act 1967	Regulates and controls certain agreements relating to the sale or bailment of goods and the provision of services on credit.	**Underway** This Act is being reviewed in conjunction with the *Fair Trading Act 1987*. *Refer priority reviews in Chapter 17, Fair Trading Legislation and Consumer Legislation*.

Act	Potential Restrictions	Status
Employment Agents Act 1996	Makes provision for the occupational licensing of employment agents in NSW.	**Underway** Review process The review is being conducted by a Steering Committee chaired by the Department of Fair Trading with representatives from relevant Government agencies. A Reference Group comprising industry representatives and other interested groups has been established to provide advice to the Steering Committee. An Issues Paper was released in early 2000 to seek public comment. A draft report was completed December 2000; Final Report is in preparation. Recommendations Final Report is in preparation.
Motor Dealers Act 1974 No 52 (1) Motor Vehicles Repair Act 1980 (2)	(1) Regulates the granting of licences to motor dealers, wreckers, wholesalers, motor vehicle parts reconstructors, car market operators, motor vehicle consultants and prescribed businesses, and requires the keeping of certain records. (2) Constitutes the Motor Vehicle Repair Industry Council (MVRIC) and confers on it licensing functions concerning repair businesses and tradesman and loss assessors.	**Underway** Review Process A Working Party supervised the initial stages of this review. Chaired by the former Director General of the Department of Fair Trading, it included representatives from the Office of the Minister for Fair Trading, The Cabinet Office, and the Chair of the Motor Vehicle Repair Industry Council. The consultancy firm ACIL Economics and Policy Pty Ltd (ACIL) was engaged to assist the Working Party in undertaking the review. The results of the review were considered by the NSW Government in April 2000. The Minister for Fair Trading released an exposure draft Bill in February 2001 containing a number of key proposals arising from the review for public comment by 30 March 2001. Recommendations The review made the following key recommendations, which have been incorporated into the draft exposure legislation: **Motor Dealers Act:** • Licensees under the Dealers Act may operate from more than one place of business. • Registers of stock and prescribed parts will only need to be kept at one place of business where multiple locations are operated by one licensee.

Act	Potential Restrictions	Status
		Motor Vehicle Repairs Act • Licensees may operate from more than one place of business, rather than having a separate licence for each premise. • Revision of repair work categories to take into account national training developme • Prescribed qualifications required as a prerequisite to the grant of a tradesperson's certificate will be placed in a Regulation. • Aspects of the licensing scheme for motor vehicle repairers will be made consistent with the licensing scheme for motor dealers. Policy Response Stakeholder comments on the draft exposure Bill are currently being considered.
Business Names Act 1962	Regulates and controls the registration and use of business names. There are restrictions on names that are able to be registered, as well as restrictions relating to certain words or phrases.	**Underway** Review Process External Review. The review is being supervised by a Steering Committee chaired by the Department of Fair Trading, and comprises representatives from The Cabinet Office, NSW Treasury, Department of Information Technology & Management, and industry groups. An Issues Paper was released in July 1998 and relevant stakeholders were consulted. The Steering Committee is currently finalising its report. Recommendations Final Report is in preparation. Progress has been delayed by the proposed establishment of the Australian Business Register as an element of the New Tax System arrangements.

Act	Potential Restrictions	Status
Residential Tenancies Act 1987 (1) Landlord and Tenant (Rental Bonds) Act 1977 (2)	(1) Regulates the respective rights and obligations of landlords and tenants under residential tenancy agreements. The Act contains specific provisions concerning excessive rents and rent increases, and confers certain functions on the NSW Residential Tenancies Tribunal in relation to landlords and tenants. (2) Regulates the respective rights and obligations of landlords and tenants in relation to rental bonds. The Act establishes the Rental Bond Board; confers certain powers, authorities, duties and functions on the Board; requires lessors of residential premises to deposit rental bonds with the Board; provides for the paying out of rental bonds and enabled the investment of rental bonds and the investment and expenditure of rental bonds.	**Underway** Review Process External Review. The review is being conducted by a Steering Committee chaired by the Department of Fair Trading, and comprises representatives from The Cabinet Office, NSW Treasury, Department of Urban Affairs and Planning, as well as tenancy and landlord representatives. Consultants from the University of Sydney and Robyn Kennedy & Co Pty Ltd are assisting the Steering Committee. An Issues Paper was released in April 1998, and public meetings were held in various metropolitan and regional centres. Targeted meetings were also held with key stakeholders including the Residential Tenancies Consultative Committee. The Steering Committee completed a draft Final Report in March 2000. Recommendations Final Report is in preparation.
Funeral Funds Act 1979	Controls and regulates contributory and pre-arranged funeral funds.	**Underway** Review Process The review is being conducted by a Steering Committee chaired by the Department of Fair Trading and comprises representatives from The Cabinet Office, NSW Treasury, Department of Ageing and Disability and Attorney General's Department. An Issues Paper was released in early 2000 and relevant interest groups have been consulted. Recommendations Final Report is in preparation.

Act	Potential Restrictions	Status
Property, Stock and Business Agents Act 1941	Regulates real estate, stock and station, business and managing agents in NSW. The Act prescribes who may practice as agents, salespersons and trainee managers through licensing requirements for agents and certificate requirements for employees, as well as the way in which agents must conduct their businesses. It also provides for a Compensation Fund to protect consumers in the event of trust account fraud.	**Underway** Review Process External Review. The review is being supervised by a Steering Committee chaired by the Department of Fair Trading and comprises representatives from The Cabinet Office, NSW Treasury, industry and consumer representatives. The Steering Committee has been assisted by the Centre for International Economics and AT Cocks Consulting. An Issues Paper was released in September 1997 and there has been extensive consultation with stakeholders, including public meetings in both metropolitan and regional centres. Recommendations Final Report was completed mid 2000. Policy Response The review process is not complete. The Final Report is yet to be publicly released – the report and related legislative proposals are awaiting Cabinet consideration.

Act	Potential Restrictions	Status
Valuers Registration Act 1975	Regulates registration procedures, which require real estate valuers to have certain qualifications, sufficient experience and to be of good character.	**Underway** Review Process External Review. The review was undertaken by a Steering Committee chaired by the Department of Fair Trading and comprises representatives from The Cabinet Office, NSW Treasury and the valuation industry. An Issues Paper was released in May 1997 and public and industry representatives were consulted extensively. The Steering Committee's Final Report was publicly released in May 2000. Recommendations The main recommendation is that the professional licensing scheme for valuers be replaced by a system of 'negative licensing'. Under the proposed system, it would no longer be necessary for a valuer to be registered by the Department of Fair Trading. Instead it would be an offence for a person to work as a valuer unless he or she meets certain prescribed requirements eg, competency standards. Strong penalties would apply for any breaches. Policy Response The NSW Government has accepted the recommendations of the Review. Legislation is currently being prepared in consultation with stakeholders to repeal the Act and to modify the system for the regulation of valuers.

Act	Potential Restrictions	Status
Travel Agents Act 1986	Regulates the licensing of travel agents and the regulation of their operations. The Act creates specific requirements relating to: • licensing (including qualification and experience requirements and 'fit and proper person' tests); • compulsory membership of the Travel Compensation Fund (TCF) (with joining costs and annual fees); and • participation in the TCF (compliance costs associated with auditing and capital requirements).	**Underway** Review Process NSW is participating in a national review coordinated by the Ministry of Fair Trading in Western Australia. The Centre for International Economics was appointed to conduct the review. An Issues Paper was released in June 1999 for extensive industry and community consultation. In July 2000, the Ministerial Council on Consumer Affairs agreed to release the consultant's draft Final Report for further consultation in late 2000. Recommendations The consultant's draft Final Report proposes a number of changes to travel agent legislation. The key recommendations are that: • a competitive insurance scheme be implemented which would open up competition to the Travel Compensation Fund; • some of the licensing requirements for agents be removed (such as qualification and experience requirements); and • in the long term, deregulation of travel agents should be considered. Policy response The NSW Government's response has not been completed. Advice still needs to be sought from the COAG Committee on Regulatory Reform (CRR) before the NSW Government's position can be finalised.

Act	Potential Restrictions	Status
Cooperatives Act 1992 (1) Cooperation Act 1923 (2)	(1) Provides for the establishment of cooperatives and the regulation of their operations. (2) Amends the law relating to cooperation and provides for the formation, registration and management of co-operative societies. *The review has been limited to an examination of Section 43 of the Cooperatives Act relating to exclusive dealing*. Section 42 of the Act, authorising cooperatives to operate as pharmacies will be reviewed after finalisation of the national pharmacy review. The remainder of the Act has been subject to review under the national core consistent provisions reform process and is NCP compliant.	**Underway** Review Process External Review. The review was undertaken by a Steering Committee chaired by the Department of Fair Trading and comprises representatives from The Cabinet Office, NSW Treasury, Cooperatives Federation of NSW Ltd, Cooperatives Council of Australia and the Cooperatives Council constituted under the Cooperatives Act 1992. A Discussion Paper was released in May 1997, and meetings were held with interested stakeholders, including industry representatives. Recommendations The Final Report was completed in November 2000. Policy response Final Report not yet publicly released and related legislative proposals await Cabinet consideration.
Fair Trading Act 1987 (1) Door to Door Sales Act 1967 (2)	Both Acts impose limitations to promote fair dealing in the marketplace. Specifically: (1) Regulates the supply, advertising and distribution of goods and services and, in certain respects, the disposal of interests in land. (2) Controls and regulates certain agreements relating to the sale or bailment of goods and the provision of services on credit.	**Underway** *Refer priority reviews in Chapter 17, Fair Trading Legislation and Consumer Legislation*.

Act	Potential Restrictions	Status
Conveyancers Licensing Act 1995	Creates requirements governing the occupational licensing of conveyancers in NSW. The legislation regulates both the right to practice as a conveyancer and the method by which such persons conduct their business. It contains provisions for the licensing process, the conduct of conveyancing business, compliance and discipline. Pro-competitive changes to conveyancing regulation over the past 10 years (culminating in the 1995 Act) have generated significant benefits to the wider community. This review is also being undertaken to fulfil the requirement under section 95 of the Act for a wider statutory review.	**Underway** Review Process The review is being conducted by a Steering Committee chaired by the Department of Fair Trading, and comprises representatives from Attorney General's Department, The Cabinet Office and NSW Treasury. A Reference Group comprising consumer and industry representatives has also been formed to provide input throughout the review. An Issues Paper was released in March 2000 and a series of meetings were held with industry and consumer representatives. The closing date for written submissions was in May 2000. Recommendations Final Report is in preparation.
Consumer Credit (NSW) Act 1995	Regulates the provision of consumer credit. The Code imposes various requirements relating to: • disclosure (such as requiring contracts to include certain information, requiring statements to be issued etc); • product innovation restrictions (such as requiring credit to be provided in cash or money's worth, limiting the securities over which a mortgage may be created etc); and • compliance (such as requiring written notices to be given, civil penalties etc).	**Underway** *Refer priority reviews in Chapter 17, Fair Trading Legislation and Consumer Legislation.*

Act	Potential Restrictions	Status
Credit (Finance Brokers) Act 1984	Relates to the conduct of business of finance brokers. The Act regulates the conduct of finance brokers by: • requiring the advertising of the licence name and address; • requiring the keeping of records; and • controlling when and how much commission is charged.	**Underway** Review Process External Review. The review is being conducted by a Steering Committee, chaired by the Department of Fair Trading and comprises representatives from The Cabinet Office and NSW Treasury Corporation. A Reference Group comprising consumer and industry representatives has also been formed to provide input throughout the review. An Issues Paper was released in April 2000 and a series of meetings were held with industry and consumer representatives. Recommendations Final Report is in preparation.
Employment Agents Act 1996	The Act regulates those persons who carry on the business of a private employment agent. The Act provides some restriction to competition in that it requires all agents to be licensed. However, the criteria for being granted a licence are not particularly demanding; the person must be fit and proper to hold a licence, be at least 18 years of age, and have reasonably suitable premises for the business.	**Underway** Review Process External Review. The review is being undertaken by a Steering Committee chaired by the Department of Fair Trading and comprises representatives from The Cabinet Office, Department of Industrial Relations and the Department of Women. A Reference Group comprising consumer and industry representatives has also been formed to provide input throughout the review. An Issues Paper was released in early 2000 and a series of meetings were held with industry and consumer representatives. Recommendations Final Report is in preparation.

Act	Potential Restrictions	Status
Electricity Safety Act 1945	Establishes an authorisation and inspection regime for electrical products, and regulates the sale and hiring of electrical apparatus.	**Underway** Review Process Terms of reference were submitted to the Premier for approval in February 2001. The Minister for Fair Trading expects that the Department of Fair Trading will chair the review with representation by the Ministry of Energy and Utilities. The review is also expected to include representatives from The Cabinet Office, Treasury, the Utility Consumers Advocacy Program, the Australian Consumers Association, the Electricity Association of NSW, the Australian Electrical and Electronics Manufacturing Association, and the Consumer Electronics Suppliers Association. Recommendations The review process is not complete.
Pawnbrokers and Second Hand Dealers Act 1996	Regulates the licensing of pawnbrokers and dealers in certain classes of second hand goods. Repeals and amends certain Acts. A pre-condition of licensing is that the applicant has attained the age of 18 years of age, is not an undischarged bankrupt and has no convictions for offences involving dishonesty. Licensees are required to keep records of transaction details, including the name and identification details of customers and a description of the goods traded.	**Underway** Review Process External Review. The review is being conducted by a Steering Committee, chaired by the Department of Fair Trading and comprises representatives from the Attorney General's Department, The Cabinet Office, and the NSW Police Department. A Reference Group comprising industry and consumer representatives was also formed to provide advice to the Steering Committee. An Issues Paper was released in April 2000, and a series of meetings were held with industry and consumer representatives. Written submissions closed in May 2000. Recommendations Final Report is in preparation.

Act	Potential Restrictions	Status
Strata Titles Act 1973 Strata Titles (Leasehold Development) Act 1986	Acts replaced by *Strata Schemes Management Act 1996* which provides for the management of strata schemes and the resolution of disputes in connection with strata schemes.	**Underway** Review Process External Review. The review is being conducted by a Working Party chaired by the Department of Fair Trading, and comprises representatives from The Cabinet Office, NSW Treasury and the Department of Fair Trading. The Working Party was set up in 2000. A Reference Group comprising industry and consumer representatives was also formed to provide advice to the working party. An Issues Paper was released in August 2000, and a number of meetings with interested consumer and industry stakeholders were held in regional and metropolitan centres. Written submissions closed in September 2000. **Recommendations** Final Report is in preparation.

Fisheries

Act	Potential Restrictions	Status
Fisheries Management Act 1994	The Act provides the legal framework for the management and administration of fisheries in NSW. The legislation aims to conserve, develop and share the fishery resource by: • licensing fishers and fish receivers; • establishing fishery and season closures; • imposing input controls on boats, gear, crew levels and fishing methods; and • imposing output controls in the form of total allowable catches, share holdings in share managed fisheries, bag and size limits and prohibitions on fishing certain species.	**Underway.** See Chapter 12 for details.

Gaming and Racing

Act	Potential Restrictions	Status
Registered Clubs Act 1976 (1) Liquor Act 1982 (2)	(1) Makes provisions with respect to the registration of clubs and their rules and management. (2) Regulates the sale and supply of liquor and regulates the use of premises at which liquor is sold.	**Underway.** *Refer to Supplementary Report to the NCC.*
Gaming and Betting Act 1912	Consolidates legislation relating to games, wagers and betting houses, the restriction of race meetings and the licensing of race courses. In October 1997, Cabinet decided to repeal and remake the Act in three separate Acts: (1) Gambling (Two Up) Act 1998; (2) Unlawful Gambling Act 1998; and (3) Racing Administration Act 1998.	**Completed /Underway.** *Refer to Supplementary Report to the NCC.*

Act	Potential Restrictions	Status
Racing Administration Act 1998 Greyhound Racing Control Board Act 1985 Harness Racing Act 1977 Bookmakers Taxation Act 1917 Thoroughbred Racing Board Act 1996	Together, these Act regulate the racing and betting industry in NSW.	*Refer to Supplementary Report to the NCC.*
Innkeepers Act 1968	Make provisions with respect to certain rights and liabilities of innkeepers and persons having dealings with innkeepers. The Act makes a distinction between "inns" and other accommodation providers. It gives innkeepers limited liability with respect to guests property, whereas other accommodation providers are subject to unlimited liability under common law.	**Complete.** Review Process Inter-Departmental Review. This review commenced in 1998 and is being conducted by a steering committee with representatives from the Department of gaming and Racing and The Cabinet Office. In 1999, the Department of Gaming and Racing produced a Background Paper and called for public submissions. The Department also engaged in targeted consultation with stakeholders. The Final Report was completed in December 2000. Recommendations The review recommends that the current Act should be retained, as it is pro-competitive. However, if there were to be a new Act, it should be written in conjunction with other Australian jurisdictions. There would also need to be consideration of international developments in this industry. Policy Response Referred to Tourism Ministers' Council to consider national issues

Act	Potential Restrictions	Status
Lotteries and Art Unions Act 1901 (1) Charitable Fundraising Act 1991 (2)	(1) Regulates the operation of minor gaming and common forms of community gaming such as raffles and bingo. Overall, the Act imposes general restrictions that limit the opportunity to profit from the conduct of community gaming to charities and other non-profit organisations. (2) Regulates who may conduct or participate in charitable fundraising activities and in what manner such fundraising activities are carried out.	**Underway.** *Refer to Supplementary Report to the NCC.*
Casino Control Act 1992	Establishes the Casino Control Authority and sets out probity requirements for the issuing of a licence to a casino operator. The Act also: • limits entry to the casino market to a single licence backed by an exclusivity period; • limits the number of gaming tables in the licensed casino; and • requires that all casino employees be specifically licensed.	***Completed.*** *Refer to Supplementary Report to the NCC.*

Health

Act	Potential Restrictions	Status
Poisons and Therapeutic Goods Act 1966	Regulates, controls and prohibits the sale and use of poisons, restricted substances, drugs of addiction and certain dangerous drugs and establishes a Poisons Advisory Committee.	**Underway.** Review Process National review conducted by an independent chair, Ms Rhonda Galbally, aided by a Steering Committee comprising representatives of the Commonwealth and all States and Territories. The review consulted widely with a range of stakeholders in all jurisdictions. Recommendations The Final Report has recently been delivered to governments, but has not yet been publicly released. Policy Response The preparation of a response to the report by the Australian Health Ministers' Conference will be coordinated initially by a small working group, whose secretariat is located in the Therapeutic Goods Administration in Canberra.
Dentists Act 1989	The Act contains restrictions on the use of titles, the practice of dentistry and the ownership of dental enterprises.	**Underway.** See chapter 14 for details.
Podiatrists Act 1989	Regulates the practice of podiatry; makes provisions for the registration of podiatrists and regulates the qualifications for and the effect of such registration; constitutes the Podiatrists Registration Board and specifies its functions.	**Underway.** See chapter 14 for details.
Human Tissue Act 1983	Relates to the donation of tissue by living persons, the removal of tissue from deceased persons and the conduct of post-mortem examinations of deceased persons. The main competition restriction being addressed by the review is the requirement for persons carrying on the business of supplying blood and blood products to be authorised by the Department Health.	**Underway.** Review Process See chapter 14 for generic details. The review is being undertaken in three parts. Only the part dealing with blood donation and the supply of blood and blood products has competition implications. The review report for this part is under preparation.
Optometrists Act 1930	The Act contains restrictions on the use of titles, the practice of optometry and the ownership of optometry enterprises.	**Complete.** See chapter 14 for details.

Act	Potential Restrictions	Status
Psychologists Act 1989	Makes provision for the registration of psychologists; regulates the qualifications for the effect of such registration and constitutes the Psychologists Registration Board and specifies its functions.	**Complete.** See chapter 14 for details.
Nurses Act 1991	Regulates the practice of nursing.	**Underway.** See chapter 14 for details.
Physiotherapists Registration Act 1945	Makes provision for the registration of physiotherapists; regulates the qualifications and effect of such registration; provides for the constitution of a Physiotherapists Registration Board and defines the powers and functions of that Board.	**Underway.** See chapter 14 for details.
Public Health Act 1991	Regulates the funeral industry, skin penetration, microbial control and other matters.	**Underway.** Review Process See chapter 14 for generic details. The Final Report is under preparation.
Nursing Homes Act 1988	Provides for the licensing and control of nursing homes.	**Underway.** Review Process See chapter 14 for generic details. An interim report will be released in the first half of 2001.
Chiropractors and Osteopaths Act 1991	Regulates the practice of chiropractic and osteopathy and repeals the *Chiropractic Act 1987*.	**Complete.** See chapter 14 for details.
Pharmacy Act 1964	Regulates the carrying on of the business of a pharmacist; authorises friendly societies and trading and rural societies established under the *Co-operation, Community Settlement and Credit Act 1923* to carry on the business of a pharmacist in certain circumstances. Amends relevant Acts.	**Underway.** See chapter 14 for details.
Private Hospitals and Day Procedures Centres Act 1988	Provides for the licensing and control of day procedure centres.	**Underway.** Review Process See chapter 14 for generic details. An Issues Paper has been released and submissions are due end of March 2001.

Act	Potential Restrictions	Status
Food Act 1989		See Chapter 11 for details.

Industrial Relations/WorkCover

Act	Potential Restrictions	Status
Occupational Health and Safety Act 1983	To secure the health, safety and welfare of persons at work and to amend certain other Acts.	**Underway.** Review Process Review undertaken as part of regulatory impact statement. Recommendations New OH&S Reg to take account of competition issues. Policy Response Draft new consolidated OH&S Regulation being implemented in 2001
Rural Workers Accommodation Act 1969	Provides for the accommodation of rural workers and constitutes the Rural Workers Accommodation Advisory Council. Creates certificate of compliance for accommodation.	**Underway.** Review Process To be reviewed after the new OH&S regulation is in place. Some industrial issues involved.

Act	Potential Restrictions	Status
Factories, Shops and Industries Act 1962	Makes provisions with respect to the supervision and regulation of factories, shops and certain other industries and to the health, safety and welfare of employees; restricts trading hours; controls advertising and description of goods; regulates outdoor work in clothing trade; restricts hours of trade and labour; controls advertising; creates licensing regime for hairdressers and prescriptive requirements for hairdressing premises.	Part 3: **Underway.** Review Process Linked to current reviews of the *Occupational Health and Safety Act*. Part 4: **Complete.** Review Process Internal review by Department of Industrial Relations and TCO. Recommendations No legislation proposals. Policy Response Trading hours in NSW largely deregulated. Comprehensive public benefit test in place for assessment of any remaining restrictions. Part 6: **Underway.** Review Process Review by Department of Industrial Relations with an external reference group. Recommendations Report being prepared Policy Response Relates to hairdressers. Issues Paper released in June 2000.
Construction Safety Act 1912	Provides for the regulation and inspection of construction work and consolidates the Acts controlling scaffolding and lifts.	**Not commenced.** Review Process Linked to *Occupational Health and Safety Act* review. Policy Response Creates several certificates of competency. Some have already been reviewed and removed under the Licence Reduction Program.
Dangerous Goods Act 1975	Consolidates and amends the law relating to explosives and other dangerous substances.	**Underway.** See Chapter 7 for details.

Act	Potential Restrictions	Status
Entertainment Industry Act 1989	Relates to the regulation of the entertainment industry and amends and repeals certain legislation.	**Underway.** Review Process Review by Department of Industrial Relations with an external reference group. Policy Response Issues Paper being drafted.

Information Technology

Act	Potential Restrictions	Status
Surveyors Act 1929	Provides for the registration of surveyors of land, regulates the making of surveys. The main restrictions on competition are that only registered surveyors are permitted to carry out boundary definition surveys or use the title 'registered surveyor'.	**Underway.** See Chapter 22 for details.

Local Government

Act	Potential Restrictions	Status
Local Government Act 1993	To provide for Local Government in New South Wales. Councils' business approvals powers in relation to undertakers, mortuaries and car parks are the only direct restrictions on competition imposed by the Act. However, the review is also examining competitive neutrality issues involved in councils' provision of services.	**Underway.** See chapter 21 for details.

Mineral Resources (Rod Morrison to provide an update)

Act	Potential Restrictions	Status
Petroleum (Submerged Lands) Act 1982	Relates to the exploration for, and exploitation of, petroleum resources and certain other resources adjacent to the coast of NSW. Potential restrictions are outlined in Acil Consulting's report entitled: 'National Competition Policy Review of the Petroleum (Submerged Lands) Legislation. The report was publicly released in April 2000.	**Underway.** See chapter 13 for details.
Mines Inspection Act 1901	Makes better provision for the regulation and inspection of mines, other than coal and shale mines, and regulates the treatment of the products of such mines. Potential competition restrictions relate to costs associated with complying with safety regulation.	**Underway.** See chapter 13 for details.
Coal Mines Regulation Act 1982	Regulates coal mines (and oil shale and kerosene shale mines) and certain related places. Potential competition restrictions relate to costs associated with complying with safety regulation.	**Underway.** See chapter 13 for details.

Police

Act	Potential Restrictions	Status
Wool, Hides and Skins Dealers Act 1935	Regulates the buying and selling of wool, hides and skins.	**Underway.** <u>Review Process</u> This review was conducted by the Ministry for Police in consultation with The Cabinet Office and the Department of Fair Trading in 1995/ 96 under the auspices of the Licence Reduction Program. <u>Recommendations</u> The review recommended that the Act should be repealed. <u>Policy Response</u>

Act	Potential Restrictions	Status
		Awaiting Cabinet consideration. To be considered by Cabinet concurrently with the findings of the Pastoral and Agricultural Crime Working Party Report, completed late 2000.
Commercial Agents and Private Inquiry Agents Act 1963	Provides for the licensing and control of commercial agents, private inquiry agents and their subagents.	**Underway.** Review Process NCP review was completed in 1994 by the Department of Fair Trading. Recommendations The review recommended that the Act should be repealed and replaced by new legislation. There would be significant reform to the licensing system including a move from occupational licensing to business licensing and removal of licensing requirements for repossession agents and process servers. Policy Response The licences for commercial agents and commercial subagents issued under the Act were identified for repeal in the Regulatory Reduction Act 1997. However, proclamation was deferred pending the outcomes of the Royal Commission and Industrial Relations Commission Inquiry, the Peterson Report on the security industry and more recently revisions to the *Security Industry Act 1997*. These revisions are not yet available.

Ports and Waterways

Act	Potential Restrictions	Status
Marine Safety Act 1998 This Act repealed, consolidated and streamlined marine safety legislation, including the: • Commercial Vessels Act 1979 • Maritime Services Act 1935 • Marine Pilotage Licensing Act 1971 • Navigation Act 1901	Regulates the use of certain vessels and of certain motors for propelling vessels; and provides for marking of load lines and the carriage of certain equipment by vessels. Provides for the constitution of the Maritime Services Board of NSW and its powers. Provides for the licensing of pilots. Consolidates the legislation relating to navigation.	**Underway.** See Chapter 10 for details.

Ports Corporatisation and Waterways Management Act 1995	• Establishes statutory state-owned corporations to manage the State's port facilities on major ports (ie, Port Kembla, Newcastle and Sydney). • Transfers waterways management and other marine safety functions to the Minister. • Establishes the Waterways Authority to administer the Marine Safety Act 1998. • Provides for port charges, pilotage and other marine matters.	**Underway.** See Chapter 10 for details.

Public Works and Services

Act	Potential Restrictions	Status
Architects Act 1921	Potential restrictions include: • limitation on the use of title 'architect' (and its derivatives e.g. architectural) to registered architects; • registration requirements for architects; and • requirement for one-third ownership by architects of businesses wishing to use the title architect and its derivatives (although such businesses are not required to be registered).	**Underway.** See chapter 22 for details.

Public Sector Management (Goods and Services) Regulation 1995	The Regulation establishes the State Contracts Control Board, which arranges for the supply of goods and services and disposal of goods for the Public Service. The restriction on competition is that certain government agencies are prevented from independently negotiating contracts for the supply of goods or services other than through the Board.	**Underway.** Review Process The regulation was subject to a joint NCP and *Subordinate Legislation Act 1989* review by the Department of Public Works and Services. A RIS was released for public consultation in April 2000. Recommendations The review found that the benefits to the State from centralised procurement outweigh any costs associated with restrictions on choices available to government agencies. It therefore recommended that the regulation be re-made with existing coverage and application. Policy Response In 2000 the Government re-made the regulation as recommended by the review.

Roads

Act	Potential Restrictions	Status
Driving Instructors Act 1992	Provides for the licensing of driving instructors and repeals the Motor Vehicle Driving Instructors Act 1961.	**Underway.** Review Process External Review. This review is being coordinated by a steering committee chaired by the Roads and Traffic Authority and comprising representatives from The Cabinet Office, the driving instruction industry and the road freight industry. An Issues Paper was released for public comment in September 1998. Copies of the Issues Paper were distributed to industry and government groups, as well as consumer organisations. Seminars on integrity issues have been held for specific stakeholder groups. The consultation period closed in November 1998. The steering committee's Final Report is being prepared following consideration of written submissions and further consultation with some stakeholders on future regulatory options. Recommendations Final Report is in preparation.
Roads Act 1993	Makes provision with respect to the roads of NSW. Repeals certain Acts.	**Underway.** Review Process The Government gave public notice of this review and a statutory review of the Act (under s.268) in early 1999 by way of press advertisement and invited submissions from interested parties. The statutory review was undertaken by the Roads and Traffic Authority. A report

		on the outcomes of the statutory review was tabled in both Houses of Parliament in June 1999. The NCP review is currently in progress. The Roads and Traffic Authority has commissioned an independent legal firm to carry out the review. <u>Recommendations</u> The statutory review concluded that the policy objectives of the Act are appropriate. Final Report of the NCP review is in preparation.

Sport and Recreation

Act	Potential Restrictions	Status
Motor Vehicle Sports (Public Safety) Act 1985	Makes provision for the control and regulation of meetings for motor vehicle racing. The principal restriction on competition is the requirement for motor vehicle racing grounds to be licensed to ensure adequate safety measures are in place.	**Underway.** Review Process A review group chaired by the Department of Sport and Recreation and with representation from central and other government agencies and industry stakeholders is conducting the review. An Issues Paper was prepared by consultants Price Waterhouse Coopers and was released for public comment in June 2000.
Boxing and Wrestling Control Act 1986	The Act regulates the conduct of professional boxing; constitutes the Boxing Authority of NSW and defines its functions; regulates the conduct of wrestling and amateur boxing contests. Industry participants are required to be registered.	**Underway.** Review Process The review is being conducted by a review group chaired by the Department of Sport and Recreation, and comprising representatives from NSW Treasury and The Cabinet Office. An Issues Paper is currently being finalised.

State Development

Act	Potential Restrictions	Status
Country Industries (Payroll Tax Rebates) Act 1977	Allows rebates of payroll tax in respect of certain country manufacturing or processing industries.	**Underway.** Review Process Internal review by Department of State and Regional Development, TCO, Premier's Department and Treasury. Policy Response Joint review in conjunction with *State Development and Industries Assistance Act 1966* and *Small Business Loans Guarantee Act 1977* (below).
State Development and Industries Assistance Act 1966	Constitutes the Minister administering the Act as a corporation sole and confers certain powers on that sole relating to the establishment, expansion and development of certain industries and to the acquisition of land.	**Underway.** Joint review (see above).
Small Business Loans Guarantee Act 1977	Authorises the execution of guarantees for the repayment of loans made to certain small businesses.	**Underway.** Joint review (see above).
Retail Leases Act 1994	Makes provision with respect to the leasing of certain retail shops and the rights and obligations of lessors and lessees of those shops.	**Underway.** Review Process Internal review by Department of State and Regional Development. A separate technical reference group, involving industry, will be established to assist the review. An issues paper is currently being prepared.

Transport

Act	Potential Restrictions	Status
Tow Truck Act 1998	Provides for a licensing and certification scheme for tow truck drivers and operators; regulates other matters; and constitutes the Tow Truck Industry Council. Interstate tow truck drivers are prohibited from retrieving vehicles in NSW unless they are licensed in NSW.	**Not commenced**. See Chapter 7 for details.
National Rail Corporation (Agreement) Act 1991	Approves and gives effect to an agreement between NSW, the Commonwealth and other States relating to the National Rail Corporation (NRC) Ltd. The NRC was established primarily to operate interstate containerised rail freight services. The prohibition on NRC from carrying intrastate freight was repealed in August 2000.	**Not commenced.** See Chapter 8 for details.

Act	Potential Restrictions	Status
Passenger Transport Act 1990	Regulates public transport services – buses, taxis and hire cars, and ferries.	**Completed / Underway / Not commenced.** Review Process *Buses:* The review was conducted by the Independent Pricing and Regulatory Tribunal (IPART) in 1996/ 97. *Taxis and Hire Cars:* The review was conducted by IPART. Final Report completed in November 1999. *Ferries:* The review has not commenced. Recommendations *Buses:* IPART recommended that the Act be amended to require bus operators to meet a Performance Assessment Regime (PAR) in order to have their contract renewed. *Taxis and Hire Cars:* See Chapter 9 for details on taxi services. IPART recommended deregulation of the hire car industry. Policy Response *Buses:* The Act was amended in 1997. The Department of Transport released a Discussion Paper on the implementation of PAR in 1998. A second Discussion Paper outlining a revised approach was released in October 2000. The submission period is now closed. A number of concerns were raised by operators in relation to the cost of implementing some of the PAR initiatives. These issues are currently under review. [On 5 June 2001, the *Passenger Transport Amendment (Transitways) Bill* was introduced into the Legislative Assembly. The Bill provides for the operation of bus services on the proposed transitways network. A designated transitway is a road which will only be available for bus services, police and emergency vehicles. The Bill provides that contracts to provide bus services on a transitway will include performance standards. Performance standards will be enforceable by civil penalty or by other means set out in the contract. The Government's intention is to procure transitway services by public tender.] *Taxis and Hire Cars:* See Chapter 9 for details on taxi services. A decision on the hire car recommendation has been deferred pending further industry consultation. A Final Report is currently being considered by Government.
Rail Safety Act 1993	Promotes the safe construction, operation and maintenance of railways.	**Not commenced.** See Chapter 8 for details.

Treasury

Act	Potential Restrictions	Status
Public Finance and Audit Act 1983 (1) Public Authorities (Financial Arrangements) Regulations 1997 (2)	(1) Makes provision with respect to the administration and audit of public finances. (2) Makes provisions with respect to certain financial arrangements and investments of public authorities; constitutes the NSW Capital Works Financing Corporation.	**On hold.** Review Process Potential competitive restrictions were identified as part of a consultation program conducted in 1998 concerning a proposal to merge five Acts (of which these were two) into a new single statute. The review of the restrictions revealed that there were net public benefits supporting their retention. The earlier intention to draft a single new statute and repeal the current Acts is currently under review.

Annexure 3

NSW Legislation For Which NCP Review And Reform Activity Was Previously Reported To The NCC As Being Complete - Status as at 31 December 2000

Agriculture

Act	Description of Act	Status
Meat Industry Act 1987	Constitutes the NSW Meat Industry Authority and provides for the regulation and control of the NSW meat industry.	**Complete.** Act was amended and the former MIA's regulatory powers were transferred to Safe Food Production NSW (a new statutory body) on 4 August 2000 when Schedule 3 of the *Food Production (Safety) Act 1998* commenced. Food safety regulation of the NSW meat industry is now provided through that Act and the *Food Production (Meat Food Safety Scheme) Regulation 2000.*
MIA Citrus Fruit Promotion Marketing Committee	The Act imposes a compulsory charge on producers of citrus in the MIA.	**Complete.** The Government decided that the Committee should continue its role of providing various services to growers. As a result of the review some limitation was placed on the Committee's role in representing the industry. In March 1998 a grower poll supported the proposed arrangements and the Committee was re-established for a further four-year term.

Act	Description of Act	Status
Fertilisers Act 1985	The Act requires registration of brand names for soil improving agents; conformation with registered particulars and composition standards; and labelling requirements.	**Complete.** Part of a generic review of all chemical residue legislation. Review Report recommendations were implemented via the *Fertilisers Amendment Act 1999*. The Review outcomes were: • removal of requirements for the brand names to be registered; • removal of minimum content requirements; and • retention and strengthening of provisions relating to food safety, overseas market access requirements and environment protection. Examples include maximum composition standards for heavy metals and labelling requirements.
Prickly Pear Act 1987	Provides for the control and destruction of Prickly Pear.	**Complete.** Act repealed. Provisions now listed under the *Noxious Weeds Act 1993*.
Poultry Processing Act 1969	The restrictions involved the requirement to meet minimum standards in the slaughtering and processing of poultry.	**Complete.** Considered with the *Meat Industry Act 1987*. Repealed 1 July 1999 when the *Meat Industry Amendment Act 1998* commenced. Food safety regulation of the NSW poultry industry is now provided through the *Food Production (Safety) Act 1998* and the *Food Production (Meat Food Safety Scheme) Regulation 2000*.
Homing Pigeons Protection Act 1909	Provides for the protection of homing pigeons during their flights.	**Complete.** Act repealed.
Sydney Market Authority Act 1968	Constitutes the Sydney Market Authority and to define its powers, authorities, duties and functions and to vest certain property in the Authority.	**Review unnecessary.** Act repealed.
Farm Produce Act 1983	Makes provisions for the registration and regulation of farm produce merchants and farm produce agents.	**Complete.** Act repealed.
Tobacco Leaf Stabilisation Act 1976	Makes provisions with respect to the stabilisation of the tobacco leaf industry.	**Complete.** Act repealed.

Act	Description of Act	Status
Wheat Marketing Act 1989	Relates to the marketing of wheat and other grains. Complementary to Commonwealth legislation.	**Review unnecessary.** Legislation to be repealed under the Statute Law Revision Program.
Dried Fruits Act 1939	Makes provision for the regulation of the dried fruits industry and reconstitutes the NSW Dried Fruits Board.	**Review unnecessary**. On 1 July 1997, the Board resolved to advise the Minister for Agriculture that its affairs should be wound up. By 1 July 2000, when the last remaining sections of the Dried Fruits Act were repealed, all matters relating to the former Board had been completed.
Marketing of Primary Products Act 1983	Relates to the marketing of certain primary products and to provide for the establishment of marketing boards in relation to certain of those products, and to enable the making of marketing orders.	**Review unnecessary**. Act to be repealed with savings provisions for remaining three authorities.
Murray Valley Wines Grapes Industry Development Committee	Constituted under the *Marketing of Primary Products Act 1983*.	**Complete.** Joint review with Victoria. The review report was submitted to both governments in early 1999. As a consequence of the review report (which received the support of the NSW industry) the Murray Valley Wine Grapes Industry Negotiation Committee, whose term of office expired in November 1998, was not renewed. The Murray Valley Wine Grapes Industry Development Committee was re-constituted as an Industry Service Committee under the *Agricultural Industry Services Act 1998*.
Murray Valley Wines Grapes Industry Negotiating Committee	Constituted under the *Marketing of Primary Products Act 1983*.	**Complete.** Joint review with Victoria. The review report was submitted to both governments in early 1999. As a consequence of the review report (which received the support of the NSW industry) the Murray Valley Wine Grapes Industry Negotiation Committee, whose term of office expired in November 1998, was not renewed. The Murray Valley Wine Grapes Industry Development Committee was re-constituted as an Industry Service Committee under the *Agricultural Industry Services Act 1998*.

Arts

Act	Description of Act	Status
Library Act 1939 (Library Regulation 1995)	Makes further provisions for the establishment, maintenance and management of libraries, library services and information services and creates certification scheme for librarians.	**Complete.** Certification scheme abolished.

Attorney-General

Act	Description of Act	Status
Public Notaries Act 1985	Provides for appointment, enrolment and disciplinary procedures for Public Notaries	**Complete.** New Act in place.
Monopolies Act 1923	Amends the law in relation to monopolies and restraint of trade.	**Complete.** Repealed.
Restraints of Trade Act 1976	Provides for Supreme Court action based on applications against activities which create restraints of trade.	**Complete.** Review complete. Act strengthens public interest test found in the common law. Act to be retained with amendment to indicate that it is subject to *Trade Practices Act* and *Competition Policy Reform (NSW) Act 1995*.
Motor Accidents Act 1988 (1) Motor Vehicles (Third Party Insurance) Act 1942 (2)	(1) Relates to the recovery of damages and compulsory insurance against liability for the death or injury of persons as a consequence of motor accidents. (2) Requires that owners & drivers of motor vehicles are insured against liability in respect of death or bodily injury, amends the *Transport Act 1930* & the *Compensation to Relatives Act 1987*.	**Complete.** NSW already has a competitive market for compulsory Third Party Insurance. Some amendments in *Motor Accidents Compensation Act 1999*.
Standard Time Act 1987	Relates to standard time and daylight saving in NSW.	**Review unnecessary.** Withdrawn as no anti- competitive issues in Act.
Classification (Publications Films and Computer Games) Enforcement Act 1995	Provides for a classification scheme for publications, films and computer games. Complementary to Commonwealth legislation.	**Review unnecessary.** This is a national scheme. A revised censorship regime with the support of all Australian jurisdictions came into operation on 1 January 1996.

Energy

Act	Description of Act	Status

Act	Description of Act	Status
Energy Administration Act 1987	Constitutes the Energy Corporation of NSW and defines its functions.	**Complete**. Licence and approval requirements repealed with proclamation of *Electricity Supply Act 1995*. Other provisions dealt with as part of structural reform of gas industry.
Liquefied Petroleum Gas Act 1961 Liquefied Petroleum Gas (Grants) Act 1980	Regulates the supply of gas.	**Complete.** Repealed by the *Gas Supply Act 1996*.
Electricity (Pacific Power) Act 1950	Provides for the constitution of Pacific Power and to define its principal objectives, powers, authorities, duties and functions. Amends and repeals certain other Acts.	**Review unnecessary.** In May 2000, the Government announced the establishment of a new state-owned corporation from Pacific Power's generation business. The new corporation, Eraring Energy, commenced operations in August 2000. No legislative change was required. It is envisaged that after a transitional phase the Act will become redundant and will eventually be repealed.
Electricity Transmission Authority Act 1994	Establishes the NSW Electricity Transmission Authority and defines its functions.	**Review unnecessary** Act repealed by s.5 of the *Energy Services Corporations Amendment (TransGrid Corporatisation) Act 1998* on 14 December 1998.
Gas Industry Restructuring Act 1986	Makes provision with respect to the structure of AGL.	**Review unnecessary** Act replaced with *Gas Supply Act 1996* which corporatised AGL.

Environment

Act	Description of Act	Status
Recreation Vehicles Act 1983	Regulates the off-road use of motor vehicles.	**Review unnecessary.** Vehicle registrations can no longer be made under this Act, as the relevant regulation expired in 1999 and will not be re-made. Management of recreational vehicles will in future rely on existing NCP-compliant powers located within road transport legislation.
National Parks and Wildlife Act 1974	Consolidates and amends the law relating to the establishment, preservation and management of national parks, historic sites and certain other areas and the protection of certain fauna, native plants and aboriginal relics.	**Complete.** Dealt with under the Licence Reduction Program.

Act	Description of Act	Status
Ozone Protection Act 1989	Empowers the regulation and prohibition of the manufacture, sale, distribution, use, emission, recycle, storing and disposal of stratospheric ozone depleting substances and articles which contain those substances.	**Complete.** Dealt with under the Licence Reduction Program.
Environmentally Hazardous Chemicals Act 1985	Provides for the control of the effect on the environment of chemicals and chemical waste. Constitutes the Hazardous Chemicals Advisory Committee.	**Complete.** Dealt with under the Licence Reduction Program. Partially replaced by the *Contaminated Land Management Act 1997*.
Waste Disposal Act 1970	Provides for the constitution of a corporation to be called the 'Metropolitan Waste Disposal Authority'; confers and imposes on the corporation responsibilities, powers, authorities, duties and functions with respect to the transport, collection, reception, treatment, storage and disposal of waste within the Metropolitan Waste Disposal Region.	**Review Unnecessary** The Act was repealed and replaced by the *Waste Minimisation and Management Act 1995*.
Unhealthy Building Act 1990	Provides for the declaration of certain land as unhealthy building land and for the effect of such a declaration.	**Complete.** Dealt with under the Licence Reduction Program.

Fair Trading

Act	Description of Act	Status
Business Licences Act 1990	Relates to business licences.	**Complete** Act to be repealed by the *Business Licences Repeal and Miscellaneous Amendments Act 2001*. Passed by Parliament on the 28 March 2001; assented to 4/ 4/ 01 but not commenced as at beginning June 2001.
Hawkers Act 1974	Provides for the licensing and control of hawkers.	**Complete** Act repealed.
Prices Regulation Act 1948	Makes provision for the regulation of prices and rates of certain goods and services.	***Complete*** The Prices Commission was abolished and prices regulation powers were transferred to the Independent Pricing and Regulatory Tribunal: *Statute Law (Miscellaneous Provisions) Act 2000 No 53* (commenced 29.6.2000).
Retirement Villages Act 1989	Relates to the termination of occupation rights of residents in retirement villages and confers jurisdiction over certain matters relating to retirement villages, on the Residential Tenancies Tribunal.	**Complete.** Retirement Villages Act 1999 assented 3/ 12/ 99

Gaming and Racing

Objective	Description of Act	
Australian Jockey Club Act 1873 (1) Sydney Turf Club Act 1943 (2)	(1) Extends the period for which the trustees of the Randwick Racecourse are enabled to grant leases and to enable members of the Australian Jockey Club to sue and be sued in the name of the Chairman. (2) Constitutes and incorporates the Sydney Turf Club and declares its objects, functions and powers and provides for associated matters.	**Completed.** (1) Current arrangements found to be in the public interest and were retained. (2) The review found that the Act does not restrict competition.

Objective	Description of Act	
Lotto Act 1979 NSW Lotteries Act 1990 Soccer Football Pools Act 1975		**Review unnecessary.** The Acts were repealed and replaced by the *NSW Lotteries Corporatisation Act 1996* and the *Public Lotteries Act 1996.*
Totalizator Act 1916	Amends and consolidates the law as it relates to the conduct of totalizators and the regulation of totalizator betting.	***Complete.*** Act repealed by *Totalizator Act 1997* which privatised the TAB. Clause 5(5) CPA analysis submitted to NCC. NCC reported analysis adequate in "Framework for the NCP Second Tranche Assessment: June 1999" (p.16).
Totalizator (Off-Course Betting) Act 1964	Makes provision with respect to off-course betting by means of the totalizator system; provides for the conduct of sweepstakes in respect of certain events; establishes a Totalizator Agency Board and defines its powers, authorities, duties and functions.	**Complete.** Act repealed by *Totalizator Act 1997* which privatised the TAB. Clause 5(5) CPA analysis submitted to NCC. NCC reported analysis adequate in "Framework for the NCP Second Tranche Assessment: June 1999" (p.16).

Health

Act	Description of Act	Status
Therapeutic Goods and Cosmetics 1972	Regulates the manufacture, distribution and advertising of certain therapeutic goods and imposes standards in relation to certain therapeutic goods and cosmetics.	**Complete.** Act repealed. Provisions relating to cosmetics not re-enacted. Licences for wholesalers of therapeutic goods eliminated. Remaining provisions incorporated into the *Poisons Act 1966* and the *Therapeutic Goods Act 1972.*
Medical Practice Act 1992	Provides for the registration of medical practitioners and medical students, the making of complaints and disciplinary action.	**Complete.** Legislation passed during the Budget Session 2000 to remove quasi practice restrictions and introduce a system of performance assessments for medical practitioners.
Tobacco Advertising Prohibition Act 1991	Prohibits the advertising of tobacco and tobacco products, trade marks, brand names and logos.	**Complete.** Act repealed. Advertising restrictions were rationalised and incorporated into the *Public Health Act 1991.*

Act	Description of Act	Status
Friendly Societies Dispensaries Enabling Act 1945	Enables Friendly Societies to operate pharmacies.	**Complete.** Act repealed. Relevant provisions were incorporated into the *Pharmacy Act*, which is currently subject to a national review.
Optical Dispensers Act 1963	Makes provision for the licensing of optical dispensers; regulates the qualifications and the effect of such licensing; provides for the constitution of an Optical Dispensers Licensing Board and defines the powers and functions of that Board.	**Review unnecessary.** Considered undertaken by a Commonwealth-State review of partially regulated occupations.
Dental Technician Registration Act 1975	Constitutes the Dental Technicians Registration Board & defines its powers, authorities, duties and functions; makes provisions for the registration of dental technicians; regulates the qualifications for, and the effect of, registration.	**Review unnecessary.** Considered undertaken by a Commonwealth-State review of partially regulated occupations.
Pathology Laboratories Accreditation Act 1981	Provides for the accreditation of Pathology Laboratories.	**Complete.** Act repealed in 1999.

Industrial Relations/WorkCover

Act	Description of Act	Status
Bread Act 1969	Makes provisions in respect of times for the baking and delivery of bread, licensing of bread manufacturers, certification of operative bakers, standard bread size; constitutes a Bread Industry Advisory Council and amends other Acts.	**Complete.** Repealed.
White Phosphorous Matches Prohibition Act 1915	Prohibits the use of white phosphorus in the manufacture of matches and prohibits the sale of matches made with white phosphorous.	**Complete.** Repealed.
Industrial Relations Act 1991	Restates and reforms the law concerning industrial relations.	*Industrial Relations (IR) Act 1991* repealed & replaced with *IR Act 1996*. Regulation of employment agents was separated from IR Act into *Employment Agents Act 1996*. The *Employment Agents Act* is under review (refer to Fair Trading).
Funeral Services Industry (Days of Operation) Act 1990	Regulates the days of operation of businesses providing funeral, burial or cremation services.	**Complete.** Act repealed.

Local Government

Act	Description of Act	Status
Local Government (Theatre and Public Halls) Amendment Act 1989	Amends the *Local Government Act* to make provision for approval and regulation of places of public entertainment and certain structures.	**Complete.** Dealt with under the Licence Reduction Program. Licence retained. Issues of public safety outweigh costs.

Mineral Resources

Act	Description of Act	Status
Petroleum (Onshore) Act 1991	Regulates the search for, and mining of, petroleum.	**Complete**. Dealt with under the Licence Reduction Program.
Mining Act 1992	Makes provisions with respect to prospecting for and mining minerals.	**Complete**. Dealt with under the Licence Reduction Program.
Coal Ownership (Restitution) Act 1990 (1) Coal Acquisition Act 1981 (2)	(1) Provides for the restitution of certain coal acquired by the crown as a result of the Coal Acquisition Act 1981. (2) Vests all coal in the Crown.	**Review Unnecessary** The acts do not restrict competition. In any case, the acts will be repealed when the Coal Compensation Board is abolished.

Police

Act	Description of Act	Status
Security (Protection) Industry Act 1985	Provides for the licensing and regulation of persons carrying on, or employed in, the business of providing security and protection for persons or property.	**Complete.** Act has been repealed and replaced by the *Security Industry Act 1997*.

Roads

Act	Description of Act	Status
Traffic Act 1909	Provides for the regulation of vehicles and of vehicular and pedestrian traffic.	**Complete.** Act repealed.

Transport

Act	Description of Act	Status
Air Transport Act 1964	Prohibits, in certain circumstances, the carriage by aircraft of passengers or goods from one place to another within NSW except if a licence is granted by the Minister. Amends certain Acts.	**Completed** Following the review, the Government agreed to deregulate intrastate aviation. The Government's initial approach was to do this via a repeal Bill (introduced to Parliament in 1998). However, the Upper House did not pass the Bill because of concerns about the impact on regional air services. Subsequently, the Government announced in August 1999 that it would pursue deregulation via administrative means. Restrictions on the number of airlines that operate on routes to and from Sydney Airport, with annual air patronage exceeding 20,000, were removed, effective 26 March 2000. These 17 routes account for 86% of all intrastate passenger journeys.
Parking Space Levy Act 1992	To discourage car use in business districts by imposing a levy on off-street parking and using the revenue to develop infrastructure and encourage the use of public transport.	**Complete.** Act retained on the basis that competition restrictions were notional only.

Treasury

Act	Description of Act	Status
Business Franchise Licence (Petroleum Products) Act 1987	Provides for the licensing of people carrying on the business of selling certain petroleum products.	**Complete.** Legislation was repealed in December 1997.
Business Franchise Licence (Tobacco) Act 1987	Provides for the licensing of people carrying on the business of selling tobacco.	**Complete.** Legislation was repealed in December 1997.
Friendly Societies Act 1989	Provides for the formation, registration, management and regulation of friendly societies and to consequently appeal and amend certain other legislation.	**Review unnecessary.** In 1999 NSW reached agreement with the Commonwealth regarding the transfer of prudential regulatory responsibilities for credit unions, building societies and friendly societies to the Commonwealth, to take effect from 1/ 7/ 99. The *Friendly Societies Reform (NSW) Act* 1999 was passed to give effect to this transfer and the *Friendly Societies Act 1989* was repealed accordingly.

Payroll Tax Act 1971	Imposes a tax upon employers in respect of certain wages and provides for the assessment and collection of the tax.	**Complete.** Dealt with under the Licence Reduction Program
Petroleum Products Subsidy Act 1965	The Act implements a Commonwealth scheme that provides for the subsidisation of fuel transport costs in rural areas.	**Review unnecessary.** The Act only enables NSW to provide an administrative arrangement for the payment of Commonwealth subsidies to distributors of petroleum. It does not involve the imposition of any competition restrictions by the NSW Government.
Government Guarantees Act 1934	Validates certain guarantees given to certain banks by the Treasurer or pursuant to Minutes of the Governor and Executive Council; authorises the Treasurer to execute certain guarantees in certain cases; makes certain contingent appropriations out of the Consolidated Revenue Fund and to amend certain Acts.	**Complete.** The review, completed in January 2000, found that there was potential for the implementation of the Act to contravene competitive neutrality principles. The Treasurer issued a Circular in September 2000 requiring Ministers to include analysis of wider public interest issues in applications for government guarantees under any Act authorising their issue.
Superannuation Administration Act 1996	Provides for trustees for State public sector superannuation schemes and the provision of investment and administration services for such schemes. Constitutes the Superannuation Administration Authority of NSW.	**Complete.** Legislation for corporatisation of the Superannuation Administration Authority was introduced into Parliament in May 1999. The legislation provided for fixed super administration contracts to be put in place for 3-5 years, following which competitive tendering will apply. No residual anti-competitive provisions will remain following the expiry of these transitional contracts.

Urban Affairs and Planning

Act	Description of Act	Status
Land Development Contribution Act 1970	Levies a contribution in relation to certain land within the Sydney region. The Act was introduced to collect contributions from developers who benefit from rezonings. The Act has not been used to collect contributions for several years, and the subordinate legislation which provided the power to collect contributions has been repealed.	**Review unnecessary**. The Act was introduced to collect contributions from developers who benefit from rezonings. The Act has not been used to collect contributions for several years, and the subordinate legislation which provided the power to collect contributions has been repealed. The Government has agreed to repeal the Act.

Annexure 4

State Reviews Of Regulatory Restrictions On Competition - Planning, Land Use And Natural Resource Approvals Systems

Project	Status
1. Development of policy options for integrated approvals system.	***Complete*** Integrated Development amendments commenced 1 July 1998.
2. Review of referral and concurrences in local planning policies.	***Underway*** Current review of the Plan Making is seeking to remove the need for referrals and concurrences in local plans by adopting a more strategic approach to local plan making. It is proposed that local plans will take into account the requirements of other agencies with regard to the permissibility and assessment of development.
3. Extend Guarantee of Prompt Service to concurrent approvals under the Environmental Planning and Assessment Act.	***Complete*** New concurrence processes in place since 1/ 7/ 98 reduce timeframes from 80 days to 60 days.
4. Review of multiple controls on land clearing State Environmental Planning Policy (SEPP) 46.	***Complete*** SEPP 46 was replaced by the Native Vegetation Conservation Act 1997, which came into force on 1/ 1/ 98, following a detailed public consultation and review process.
5. Integration of total catchment management objectives in planning instruments.	***Underway*** A Government White Paper: *Plan First - Review of Plan Making* released on 6 February 2001. The White Paper proposes to integrate catchment management objectives into new *Regional Strategies*: integrated, strategic planning instruments under the EP&A Act, that will apply to every region of the state.
6. Examination of feasibility of incorporating plans for: river management; land management; habitat management; environmental protection; forestry reserves into planning instruments under the Environmental Planning and Assessment (EP&A) Act.	***Underway*** A Government White Paper: *Plan First - Review of Plan Making* released on 6 February 2001. A key theme of the White Paper is the integration of all policies and plans relevant to environmental and land use issues into a single local planning instrument for each LGA, a single regional strategy for each region and a single state planning policy document.
7. Review and reform of regulations affecting mining.	***Underway*** NSW Department of Mineral Resources is currently conducting reviews of the *Mines Inspection Act 1901* and the *Coal Mines Regulation Act 1982*.
8. Review and reform of regulations affecting mariculture.	***Underway*** NCP review of the *Fisheries Management Act 1994* has commenced. An issues paper was released in November 2000 and the final report is in preparation.
9. Review and reform of regulations affecting forestry including the corporatisation of State Forests.	***Underway*** See Chapter 12
10. Review of s90 EP&A Act 'heads of consideration' for development consent.	***Complete*** Section 79C of the reformed EP&A Act introduces generic heads of consideration streamlining old processes.

11.	Review potential for increasing 'as of right developments'.	***Complete*** Completed with the introduction of State-wide complying/ exempt development in April 2000. 85 percent of councils in NSW have some form of complying/ exempt development.
12.	Consider potential for private certification of building, sub-division water and sewerage approvals.	***Complete*** Reforms to development assessment system introduced 1 July 1998 contains certification for building and subdivision.
13.	Integrate building and planning approvals.	***Complete*** Reforms to development assessment system combined the development, building and subdivision approval processes.
14.	Examine zoning prohibitions for anti-competitive effects; consider wider adoption of performance standards.	***Underway*** The White Paper: *Plan First - Review of Plan Making* proposes a locality planning approach as opposed to that of land use zoning in local plans. This approach places emphasis on desired planning outcomes thereby minimising the need for prescriptive lists of permissible and prohibited land uses. A general aim of the Part 3 reforms is to reduce the unnecessary use of prohibitions in planning instruments.
15.	Review and reform development without consent (SEPP 4) for change of use in industrial areas.	***Complete*** Undertaken through the establishment of the new categories of Exempt and Complying Development under the EP&A Act.
16.	Consider combining development and re-zoning applications.	***Complete*** EP&A Act amended to allow for this situation.
17.	Review heritage approvals and consider better integration with Development Approval/ Building Approval (DA/ BA) processes.	***Complete*** Heritage approvals now integrated under the EP&A Act. Heritage Act amendments streamline the process where development is in accordance with a Conservation Plan.
18.	Consider potential for standardising consent conditions, zoning classifications and definitions of performance standards.	***Underway*** DUAP is working with councils thought advisory notes to improve consent conditions. A set of standard conditions or principles of conditions is being worked on to get greater consistency. The White Paper: *Plan First - Review of Plan Making* proposes a locality planning approach to local planning which would effectively remove the need for zoning classifications. DUAP is aware of the work of the Development Assessment Forum (DAF) seeking to develop national standard definitions and will make a submission on the DAF discussion paper on these issues.
19.	Stage II review of pollution control acts to streamline and rationalise licensing procedures.	***Complete*** The Protection of the *Environment Operations Act 1997* (PoEO Act) and regulations commenced on 1 July 1999, replacing five core pollution control statutes and providing for stronger environment protection, while streamlining the licensing process. Businesses now require only one environment protection licence that recognises the ongoing, long-term nature of operations.
20.	Review water legislation and licensing.	***Underway*** See Chapter 6
21.	Develop framework for Coordinated/ Integrated Development Approval Conditions and other requirements and advice on the use of the framework.	***Underway*** DUAP has been working on Best Practice Guidelines and education requirements with agencies involved in Integrated Development as part of the publication of *Guiding Development: better outcomes*.

22.	Develop Best Practice Guidelines for a Co-ordinated/ Integrated Development Approval System for Mining and Extractive Industry.	***Complete*** Guidelines were issued in September 1997. Relevant amendments to the EP&A Act came into effect in July 1998.
23.	Develop Best Practice Guidelines for Planning Focus.	***Complete*** Guidelines have been prepared.
24.	Develop Best Practice Guidelines for Community Consultation.	***Underway*** In conjunction with the Plan Making review, a companion document to the *Plan First* White Paper has been placed on public exhibition. The document, *Ideas for Community Consultation: A discussion on principles and procedures for making consultation work* will form the basis for a DUAP guideline document for best practice in community consultation.
25.	Review of endangered species legislation so as to integrate licences and DAs.	***Complete*** The *Threatened Species Conservation Act 1995* amended the *National Parks and Wildlife Act 1974* to integrate licences and development applications/ consents with respect to harming, picking threatened species populations or ecological communities. The relevant section of the *National Parks and Wildlife Act* is Section 18A (3) (b). This amendment took effect on 1 January 1996.
26.	Adopt reformed Australian Building Code (as performance standards) with minimal variations.	***Complete*** Performance-based 1996 Building Code of Australia was adopted in NSW.
27.	Convert siting rules to performance standards.	***Complete*** Provisions relating to fire standards were repealed on 1 July 1999. These siting standards are now controlled through the performance-based Building Code of Australia, and through councils' Local Environment Plans and Development Control Plans. Other siting requirements are controlled under LEPs and DCPs where necessary.
28.	Extend and improve performance benchmarking of local councils.	***Ongoing*** The Government is continuing to improve the comparative performance information it collects and publishes annually on local councils. DUAP is working on a benchmarking program to measure the effectiveness of the development assessment system in NSW. This program will be supplemented by an auditing program of council's performance as part of the movement to the decentralisation of development assessment fees.
29.	Public consultation to improve operation of current approval rights and dispute resolution system.	***Underway*** Proposed changes to Plan Making will see increased opportunities for community consultation before and during the plan making process. As a result of increased community 'ownership' of planning instruments, reduced disputes at the development assessment and approval stage will eventuate.
30.	Examine the potential for consolidating land, water and related natural resource management legislation into a single statute.	***Complete*** The White Paper: *Plan First - Review of Plan Making* proposes the integration of the *policies* of state agencies relevant to land, water and other natural resource management into a single State Planning Policies document. The consolidation of statutes was not an option presented in the White Paper.

Annexure 5

State Forests' of NSW Log Allocation and Pricing

A description of allocation and pricing policies applied to State Forests' softwood log products and hardwood logs from coastal and tablelands forests and related haulage and harvesting services follows. These comprise the bulk of State Forests' timber sales revenues.

Softwoods Sales

Softwood is mainly sold (via royalties) under various long term agreements between State Forests and softwood processors. A typical agreement may be for a ten-year term plus a ten-year option with a price review each year.

In the case of Visy Industries proposed $450m plant at Tumut, a 30+30 year wood supply agreement was agreed to by the Government to underpin the significant capital investment involved.

Softwood contracts typically require State Forests to supply at a given rate and price and contain a 'take or pay' clause binding the buyer to a proportion of their commitment in the event of market or production fluctuations.

Softwood logs ready for harvesting but not needed to meet supply commitments may be put to open tender or offered to known potential customers at market prices.

Softwood is a commodity competitively traded across the world with minimal import barriers. State Forests competes against numerous private pine plantation owners in New South Wales, interstate and overseas and hence cannot dictate the price that processors have to pay. State Forests' pricing policy is to seek to charge softwood royalties at the international market price adjusted for regional variations in timber quality, production costs and market outlook. This occurs in the context of a volatile domestic building market.

The international market price of softwood is less volatile than for many other base commodities traded internationally. This enables State Forests to calculate a quasi-international price, for inclusion in its pricing deliberations. Agreement prices are adjusted under contract conditions, ie at six-monthly or annual intervals.

State Forests submits that its price setting system, being arrived at by reference to competitive domestic and world markets rather than its own costs or profit targets, is consistent with competition policy principles.

Hardwood Allocation

Hardwood logs are typically sold (via royalties) under annual, medium and long term agreements between State Forests and the owners of processing facilities, generally sawmills.

Until 1996, most hardwood customers for high quality, large logs were supplied under an annual allocation arrangement, known as the quota system. In 1996/ 97, the Government announced the conversion of a number of State forests to National Parks. It was also announced that a number of other State forests would be unavailable for timber harvesting pending the completion of Comprehensive Regional Assessments, in accordance with the National Forest Policy Statement and the Government's 1995 election policy on forestry. At the same time, annual quota allocations were reduced to some 55 per cent of their 1995/ 96 levels and the Government commenced a phased increase in quota timber royalties of 30 per cent.

It is NSW Government policy to provide resource security to the native forests timber industry by granting long term timber supply agreements. The Government initiated long term timber supply agreements with former annual quota recipients in 1997. These agreements were for an initial five year period and were renewable for a further five years, subject to resource availability and value-adding performance by term agreement holders.

Following the completion of Comprehensive Regional Assessments, long term sustainable timber supply levels have been determined. This resource security has made it possible for the Government to extend the term of the supply agreements to 20 years.

20-year Term Agreements are contracts between the Minister for Forestry and the private holder. The allocations under the Agreements are divisible and tradeable between potential buyers and sellers (subject to Ministerial approval of proposed trades).

Term Agreement holders must be compensated by the Government if future changes in Government policy affect their timber supply. The Term Agreements retain a requirement to meet value adding criteria by 2003.

Hardwood Pricing Policy

In 1997-98, State Forests implemented the Hardwood Log Value Pricing System for determining the value of native hardwood timber sold by State Forests. This pricing system provides for an objective approach to pricing, that the timber industry demanded, by enabling a market value of timber to be derived from the market price of end products rather than on State Forests' costs or profit targets.

The residual value of log timber (ie the royalty payable to State Forests) at a point in time is derived by surveying and analysing costs and margins at various points in the timber processing sequence. A matrix is then created

which differentiates prices for 21 species groups of native hardwood logs in three size classes and for each of 45 price zones across NSW. The end-market values are re-calculated annually.

The Table below sets out an illustrative example of the elements in the calculation method and how it may applied to one log class.

Cost Element	Description	Cost per m^3
Average Market Price	**Weighted Average Price per cubic metre of nine timber classes when sold by saw miller.**	**$900**
(less) Return on Sales for Saw Miller	A 20% profit margin is accepted as necessary for long-term industry viability.	($180)
(less) Sawn Haulage Costs	Cost of delivery from green mill to drying/ dressing plant	($22)
(less) Cost of Processing Dry Timber	The processing costs for drying and dressing sawn timber.	($228)
(less) Green Mill Processing Cost	The sawmill's processing costs for milling saw logs.	($150)
(less) Recovery from Net Wood	A factor to reflect net usable timber from saw logs. The industry accepts that only 32% of the original saw log will be able to be converted into sawn timber, due to log defects and other wastage factors	($220)
(less) Harvesting and Haulage Cost	A value per cu. m per km is determined for harvesting and haulage to saw mills.	($41)
Residual Log Value	**State Forests' hardwood royalty**	**$59**

Calculation of timber values within each Price Zone uses data that is Price Zone specific, such as harvesting and haulage costs, defect allowances, and freight to market costs to arrive at residual log values (royalty rate) specific to the Price Zone.

Timber that becomes available that is surplus to committed volumes is offered on the open market by tender or at a negotiated price.

It is submitted that State Forests' hardwood pricing policy conforms with competition policy principles because:

- its prices are directly market based or derived from the HLVPS which objectively determines a quasi- market price for logs at stumpage, through a process which takes no account of State Forests' market power, its costs or its profit target;

- State Forests is not exploiting its dominant supplier position because it bases its log values on an annual review of timber prices in accordance with a formula developed in consultation with and agreed to as fair and

reasonable by most of its customers. There is some negotiation with the industry before the results of the market survey are applied each year;

- State Forests must accept the price derived by the HLVPS, must adjust its cost structures to remain viable and meet Government dividend expectations, borrowing requirements and taxation liabilities and is not able to arbitrarily increase its prices to generate greater revenues; and

- the NSW hardwood timber industry is competitive within itself and also is subject to external competition from interstate, imports and from substitutes for hardwood timbers, such as steel, concrete and treated softwood.

The market survey that underpins the price review has helped to fill a void in pricing information. Forest management Agencies in other States have seen the value of participating in the end market surveys. However, there has been no consultation between State Forests and Agencies in other States on log pricing (timber royalties).

Contract Harvesting and Haulage Charges

In recent years, State Forests has undertaken to deliver specified timber directly to some sawmills (delivered sales) and, in order to accommodate such cases, State Forests has arranged long-term harvesting and haulage contracts with private enterprise service providers. This new system of delivered sales is known as Log Merchandising.

In regions where Log Merchandising has been introduced, the majority of sawmillers have chosen to purchase their sawlogs from State Forests on a delivered sales basis.

Log Merchandising has proven successful in the two native forest regions and four softwood regions where it has been implemented. State Forests intends to progressively extend the system into other regions.

Benefits seen to date from introduction of Log Merchandising include:

- a shift toward fewer, larger harvesting and/ or haulage contractors with more highly trained employees;

- increased competitiveness of delivered wood costs, with savings principally from harvesting and haulage efficiencies achieved through greater coordination of operations, higher productivity from modern equipment and the benefits of using well trained staff;

- greater opportunity for State Forests to provide mills and other customers with the species mix and grades that will support their further development and value adding; and

- significant increase in log sales and State Forests' revenue (around $5M pa in Hume and Monaro regions alone) involving: new log sales; the realisation of price premiums on some lines; improved unit rates through better product segregation; and efficiency dividend on harvesting and delivery operations.

Pricing Policy

In Log Merchandising regions, a number of harvesting and haulage contractors are selected from among tenderers by a competitive process. Each selected tenderer is awarded a long term contract (up to 9 years, including rollovers) based on satisfying the conditions as set out in the tender offer.

The tender selection process takes into account: the past performance of contractors; equipment; regional employment; and the tendered price of services.

Contracted rates are reviewed and renegotiated annually to adjust for increases in the major cost elements incurred by a contractor.

The tendering and contractor selection process guarantees that State Forests is not involved in price exploitation in respect of the harvesting and haulage charges passed onto customers. Competitive tendering for State Government contracts historically compels tenderers to eliminate excessive margins to remain competitive.

Each tender is subject to an agreed probity plan with independent probity auditors engaged at both evaluation and review stages.

Ongoing rationalisation within the timber industry is fostering competition. This process has been accelerated by NSW Government forestry reforms that have reduced timber volumes and fostered value-adding and the best use of all available logs. Log Merchandising provides a fair mechanism for allocating scarce harvesting and haulage work, while assisting the achievement of other elements of the Government's forestry policy (worker safety, environmental compliance and value adding investment).