NEW SOUTH WALES GOVERNMENT

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

May 2005

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ABBREVIATIONS USED IN THIS DOCUMENT

2003 NCP Report	NSW Government, *Report to the National Competition Council on the Application of National Competition Policy in New South Wales*, March 2003
2004 NCP Report	NSW Government, *Report to the National Competition Council on the Application of National Competition Policy in New South Wales*, April 2004
2004 Supplementary NCP Report	NSW Government, *Supplementary Report on the Application of National Competition Policy in New South Wales*, July 2004
COAG	Council of Australian Governments
IPART	Independent Pricing and Regulatory Tribunal
NCC	National Competition Council
NCP	National Competition Policy

1. INTRODUCTION

1.1 Overview

New South Wales continues to demonstrate its strong commitment to the NCP reform program, as it has since its commencement in 1995.

These reforms included the establishment of the National Energy Market. New South Wales was the first State to introduce full retail contestability in the supply of both electricity and gas to the household level. By 28 February 2005 over one million small customers had entered into negotiated supply contracts with their preferred electricity provider.

The NSW Government continues to be a leading State in energy market reform by taking a leading role in developing a 'second wave' of reforms beyond the competition policy framework. The NSW Government has sought to further develop the national character of energy markets through a work program led by the Ministerial Council on Energy and the COAG.

All NSW Government businesses operate within a comprehensive commercial policy framework, and all major businesses with monopoly characteristics are subject to independent price oversight by IPART.

In accordance with the requirements of the 1994 COAG Strategic Water Reform Framework, New South Wales has developed a comprehensive system of water allocations, with allocations to the environment and water users based on the best scientific information available. Thirty-one of New South Wales' water sharing plans have been gazetted, with a further five to commence this year. In accordance with the Intergovernmental Agreement on a National Water Initiative, the monitoring of jurisdictions' progress in this area is now the responsibility of the National Water Commission.

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

The main reform obligation remaining under NCP is the process of legislation review and reform, which is the main focus of this report. New South Wales has made substantial progress in completing its review and reform activity. In summary, of the 30 outstanding areas identified by the NCC in its 2005 assessment framework:

- 16 review and reform processes have now been completed;
- 4 review and reform processes will be completed following the passage of legislative amendments to enable implementation of reforms; and
- 5 reviews are incomplete due to national or inter-jurisdictional processes outside of New South Wales' direct control.

The NSW Government has established a regulatory environment and gatekeeping process that promotes the systematic and transparent assessment of the costs and benefits of all proposed government regulations.

1.2 2005 NCP Assessment

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

The report outlines the Government's progress in implementing its NCP obligations for the period 1 April 2004 to 31 March 2005 in the areas identified by the NCC for its 2005 assessment. The report also forecasts legislation review and reform activity as per available information at 31 April 2005.

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

1.3 Structure of this Report

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

- energy, including electricity and gas (Chapter 2);
- competitive neutrality (Chapter 3);
- priority legislation review and reform, including progress in liquor reform and intrastate aviation (Chapter 4);
- non-priority legislation review and reform (Chapter 5); and
- new legislation and gatekeeping (Chapter 6).

2 ENERGY

ELECTRICITY

2.1 National Electricity Market Reform

The NCC has indicated in its 2005 assessment framework that it will consider progress in implementing the reform measures related to the development of the national electricity market, and other coordinated reform initiatives being developed through COAG, the Ministerial Council on Energy, and the NEM Ministers' Forum.

The national electricity market has been operating successfully since 1998. The *National Electricity Law* provides the legislative framework for the market's operation. A Schedule of the *National Electricity (South Australia) Act 1996* outlines the law for the purposes of its application in New South Wales, Queensland, Victoria and South Australia. The law is applied in New South Wales by the *National Electricity (NSW) Act 1997*. This legislative framework also supports the National Electricity Code or 'rule-book' for the market, which is overseen by the National Electricity Code Administrator.

New South Wales is taking a leading role in developing a 'second wave' of reform to further develop the national energy market. Through COAG and the Ministerial Council on Energy, the NSW Government has sought to further develop the national character of electricity and gas markets.

In June 2004, COAG adopted the Australian Energy Market Agreement; a package of reforms to Australia's energy markets, developed by the Ministerial Council on Energy, covering governance and institutions, economic regulation, electricity transmission, user participation and gas market development.

These important energy market reforms include:

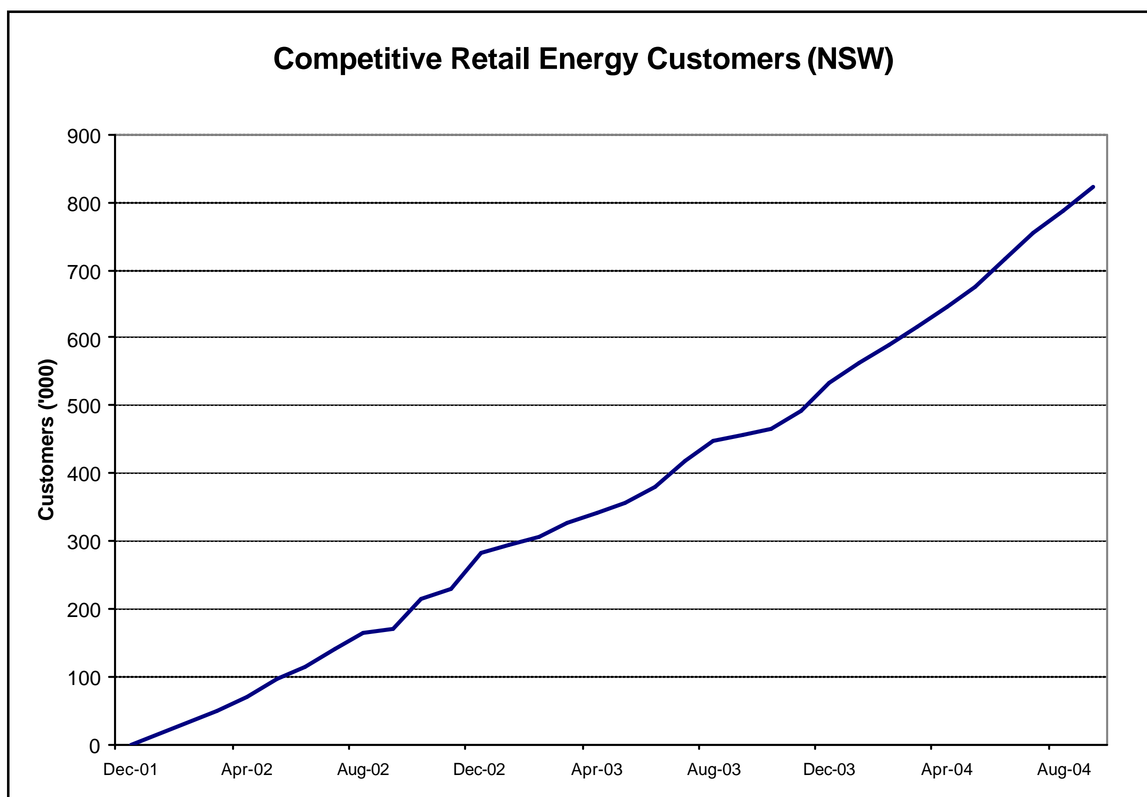
- the separation of energy market rule-making and enforcement with the creation of an Australian Energy Market Commission and an Australian Energy Regulator; and
- the development of a national framework for the regulation of energy retailing and distribution.

This new work program is beyond the scope of the Competition Policy Agreements and represents an entirely new stage of energy market reform. This work was commissioned and is being monitored by COAG. There has been no agreement by COAG that this further stage of energy market reforms will form part of NCP, or part of the NCC's assessment framework.

2.2 Retail Market Competition

In its 2005 assessment framework, the NCC has sought information as to any developments in relation to retail prices oversight since the 2004 assessment.

Customer take-up of competitive supply contracts has continued to grow steadily since the introduction of competition on 1 January 2002. By 28 February 2005, over one million customers had chosen to negotiate a competitive contract with their retail supplier. By gradually introducing competition, the NSW Government has sought to provide an orderly transition toward a fully competitive retail market.



In its 2004 and 2003 NCP Reports, the NSW Government reported in detail the basis of its decision to maintain regulated tariffs, as a 'safety net' for consumers during the transition to a fully competitive market, until 30 June 2007. While the NSW Government is committed to providing safeguards for small customers during the transition to full competition, it is important to gradually reduce customers' reliance on regulated prices.

Consequently, the NSW Government strongly supports regulated tariffs being structured in such a way as to encourage customers and prospective competing retailers to enter the competitive market. To this end, the NSW Government instructed IPART to consider those aspects when conducting its recent review of regulated retail tariffs.

IPART finalised its regulated retail tariff determination in June 2004. In making its determination, IPART stated that 'prices must move toward the cost of supply in order to remove barriers to efficient competition, and to provide signals for efficient investment in new generation capacity'[1]. IPART's determination aimed to balance the need to better signal the cost of supply, while protecting small retail customers from significant price shocks.

[1] IPART, *NSW Electricity Regulated Retail Tariffs 2004-05 to 2006-07 – Final Report and Determination*, June 2004, p1

IPART's determination will allow average prices for regulated retail customers to increase by an average of between 5.0 per cent and 5.8 per cent per annum between 1 July 2004 and 30 June 2007. This will provide for a transition from current regulated prices to 'target tariff levels' that reflect the efficient costs incurred by retailers in supplying electricity to customers. These costs include wholesale energy purchase costs, NEMMCO[2] fees and ancillary service costs, retail operating costs, energy losses, and the retail margin.

More detail on the determination can be found in the report *NSW Electricity Regulated Retail Tariffs 2004-05 to 2006-07 – Final Report and Determination*, which is available on the IPART website at www.ipart.nsw.gov.au.

While regulated tariffs continue to be useful in facilitating an orderly transition towards a fully competitive retail market, the role of regulated tariffs beyond 2007 is an important issue for the NSW Government.

As part of the Australian Energy Market Agreement, jurisdictions have agreed to transfer responsibility for retail regulation to the Australian Energy Regulator. Retail pricing, however, was specifically excluded from this Agreement.

Each jurisdiction will be free to choose whether it will transfer retail price regulation responsibility to the Australian Energy Regulator. In this context, an important consideration for New South Wales is whether the Australian Energy Regulator or IPART should regulate prices, if regulation is continued beyond 2007.

The NSW Government has issued a discussion paper, *Energy Directions Green Paper*, which among other things, seeks stakeholder input on the future of price regulation from 1 July 2007 and the transfer of responsibility for price regulation to the Australian Energy Regulator. The green paper is available from the Department of Energy, Utilities and Sustainability website at www.deus.nsw.gov.au.

2.3 Electricity Tariff Equalisation Fund

The NCC has again expressed its concern that the operation of the Electricity Tariff Equalisation Fund (ETEF) may adversely affect emerging retail competition.

In its 2004 NCP Report and 2004 Supplementary NCP Report, the NSW Government has made the case that the ETEF is a transitional measure that cannot be assessed in isolation from the decision to extend regulated prices to 2006-07.

Independent analyses by IPART and PricewaterhouseCoopers have confirmed that, although competition is developing for small retail customers in New South Wales, it cannot yet be considered effective[3].

During the transition to a fully competitive market, the NSW Government has concerns in relation to the potential for suppliers to exploit their market power over

[2] NEMMCO - National Electricity Market Management Company Ltd
[3] IPART, *NSW Electricity Regulated Retail Tariffs 2004-05 to 2006-07 – Final Report and Determination*, June 2004, p.30

small retail customers. The NSW Government has put in place a package of safeguards for small customers, including the provision of regulated price contracts. At the same time as they protect small customers, these safeguards promote the move to a competitive market by providing a 'safety-net' for customers who wish to experiment with the competitive market.

Retailers that provide those regulated contracts are required to purchase electricity at market rates in the highly volatile wholesale market, where the price can increase from around $30 per MWh to $10,000 per MWh within a few hours. While regulated retail tariffs are maintained, the volatility of the wholesale market creates significant risks for affected retailers.

The ETEF allows retailers to manage this wholesale price risk. When the wholesale price is below the regulated retail price, the retailer pays the surplus funds it accumulates into the ETEF. When the wholesale price is above the regulated retail price, the ETEF then provides a store of funds to assist retailers to meet their obligations.

In its 2004 NCP Report, the NSW Government reported on its examination and consideration of a number of options for managing this risk. The ETEF was selected as the preferred tool as it is the most efficient means available for managing purchase price risk, and has the least impact on the wholesale market price.

Also in its 2004 NCP Report, New South Wales has shown that there is no evidence that the operation of the ETEF has reduced energy related financial market trading activity. A number of key statistics updating the information previously provided are at Appendix A.

The ETEF arrangements are due to expire on 30 June 2007, in line with the current retail price determination. As mentioned above, the NSW Government is currently considering options for the reform of retail price regulation to apply after June 2007. The form of retail price regulation after that date would dictate the most appropriate trading risk management mechanism for electricity retailers.

These issues are among those being canvassed with stakeholders through the *Energy Directions Green Paper*.

GAS

2.4 Submerged Lands Legislation

The NCC has sought advice on progress in reforming the *Petroleum (Submerged Lands) Act 1982*.

The Act is part of a set of complementary legislation across the Commonwealth, all States and the Northern Territory governing offshore petroleum exploration and development.

The 1999 NCP review of the petroleum submerged lands legislation commissioned by the Australian and New Zealand Minerals and Energy Council found that the New

South Wales legislation did not contain significant anti-competitive elements. The review did, however, conclude there was scope to enhance competition through some minor amendments to the Act.

Given the need for New South Wales to mirror Commonwealth legislation, the NSW Government had delayed its reforms while further amendments were considered at the Commonwealth level. However, the NSW Government now anticipates introducing the necessary amending legislation during the current parliamentary session.

2.5 Gas Quality Standards

The NCC has requested advice on progress in implementing the national gas quality standard.

New South Wales has fully implemented the national gas specification defined under the relevant Australian Standard.

The Gas Supply (Safety Management) Regulation 2002 as amended on 27 August 2004 by the Gas Supply (Network Safety Management) Amendment Regulation 2004, states at clause 19 ‘compliant natural gas means natural gas that complies with the standards set out under AS 4564’.

3 COMPETITIVE NEUTRALITY

New South Wales has complied with its competitive neutrality obligations as required under the Competition Principles Agreement. New South Wales' reports to the NCC for 2000, 2002 and 2003 provide a comprehensive account of the application of competitive neutrality principles in New South Wales.

Appendix B to this report provides an updated list of New South Wales general government agencies that are required to apply competitively neutral costing and pricing principles to goods and services. Appendix C provides updated information on Government Business Enterprises that have been corporatised or privatised.

As foreshadowed in last year's report, State Water, a business unit within the Department of Energy, Utilities and Sustainability, was corporatised on 1 July 2004.

State Water's core functions include:

- asset management of dams, weirs and other water infrastructure;
- water delivery operations; and
- flood mitigation.

State Water continues the delivery of bulk water to irrigators, farmers and industrial customers as well as environmental water, in accordance with the Water Sharing Plans. IPART will continue to regulate bulk water pricing in New South Wales and will audit State Water's performance on a regular basis.

Sydney Ferries was also corporatised on 1 July 2004.

While the Sydney Ferries Corporation continues to operate the same type of ferry services that were operated by the State Transit Authority, the new governance arrangements provide greater accountability specifically for the operation of ferry services in terms of financial performance, service levels, fleet maintenance and procurement, and the identification of new commercial opportunities.

Competitive Neutrality Complaints

During the reporting period, the NSW Department of Local Government did not receive any complaints requiring investigation of competitive neutrality breaches by local councils.

On 24 March 2005, the Premier received a complaint in relation to the application of competitive neutrality principles to certain commercial activities of the Sydney Ferries Corporation. In accordance with the NSW Government's competitive neutrality complaints handling mechanism, the complaint has been referred to Sydney Ferries Corporation for direct response in the first instance.

If the complainant is not satisfied by the Corporation's response, it may then request that the Premier refer the matter to IPART for independent investigation.

Complaints against the State Valuation Office[4]

As noted in New South Wales' 2004 report to the NCC, the NSW Government received three complaints against the State Valuation Office (SVO), a commercial business unit of the NSW Department of Commerce. The three complainants each alleged that the SVO failed to comply with New South Wales' competitive neutrality obligations in pricing tender bids for mass valuation contracts for each of six local government areas; five in New South Wales and one in Victoria.

As reported in New South Wales' 2004 supplementary report to the NCC, the complaints were referred to IPART for independent investigation and report.

IPART completed its investigation in October 2004. It found that the methodology the SVO used to price the tenders that were the subject of the complaints was consistent with New South Wales' competitive neutrality principles. IPART's report also made recommendations for some improvements to the SVO's documentation and procedures to assist with future reviews of compliance.

In accordance with New South Wales' competitive neutrality complaints handling policy, the Minister for Commerce responded to the report, noting that the NSW Department of Commerce is in the process of implementing all of IPART's recommendations.

IPART's report, *Investigation of Competitive Neutrality Complaints against the State Valuation Office*, is available on its website at www.ipart.nsw.gov.au.

[4] Since the complaints were lodged, the State Valuation Office has been renamed the Property Valuation Service.

4 PRIORITY LEGISLATION REVIEW AND REFORM

4.1 Specific Penalties

Poultry Meat Industry Act 1986

In its 2003 assessment, the NCC assessed the *Poultry Meat Industry Act 1996* as restricting competition between processors and growers by setting base rates for growing fees centrally, and by prohibiting agreements between processors and growers unless approved by an industry committee.

On 17 February 2004, the NSW Government introduced amendments to Parliament to address the NCC's concerns relating to the Act. Following subsequent discussions with the NCC, the NSW Government withdrew the proposed amendments and commissioned an independent NCP review of the Act. The NCC endorsed this approach, and was closely consulted on the terms of reference and the selection of the consultant for that review.

The review, conducted by Ridge Partners, is now complete. The review reported that the Act was put in place because of concern about potential abuse by processors of their perceived market power over growers in the negotiation of contracts for supply of poultry growing services. The review found that, while the Act has delivered competitive fees to New South Wales' contract poultry growers, there is concern that the pervasive nature of the centralised arrangements established under the Act impedes efficiency and innovation in the sector.

A copy of the review report was provided to the NCC on 9 February 2005. On 21 February 2005, the NCC advised New South Wales that, if the NSW Government were to proceed with reforms as recommended in the report, it will have met its obligations under the Competition Principles Agreement arising from the Act.

The review report recommended the adoption of modified regulatory arrangements, which provide safeguards for the behaviour of parties whilst avoiding the use of centralised, compulsory price-fixing and contract approval mechanisms.

The NSW Government has accepted the review report, and is currently preparing legislative amendments which will implement the modified arrangements. The key features of those arrangements are:

- administration of industry arrangements by an independent body without the direct participation of industry;
- the administering body will have no powers to directly resolve pricing disputes, determine prices, or compulsorily procure information;
- the use of contract guidelines to establish an industry standard as to the minimum content of grower contracts and to underpin a broader voluntary Code of Practice on contract negotiations;
- an industry advisory group will have input as to contract guidelines;
- the ability for parties to opt-out of the regulatory arrangements; and

- the parties to an agreement will have access to dispute resolution processes, involving initial mediation of disputes or, if mediation fails and both parties agree, arbitration.

It is proposed to introduce the amending legislation in the current parliamentary sitting.

***Marketing of Primary Products Act 1983* (Rice)**

The 1995 NCP review of the Rice Marketing Board, which is established under the Marketing of Primary Products Act 1983, found that the rice marketing arrangements provide a substantial net public benefit, with the market premiums from rice exports considerably outweighing some efficiency costs to the domestic market.

In February 1999, the Commonwealth Treasurer presented a proposal for a Commonwealth single export desk arrangement for rice. He asked New South Wales for an in-principle agreement to remove its rice marketing arrangements if it could be shown that the Commonwealth proposal would be effective in maintaining export premiums.

In April 1999, New South Wales gave in-principle support to the Commonwealth proposal, and the consequent deregulation of State-based rice marketing arrangements, as a means to reduce the small domestic level costs while maintaining the benefits of the export arrangements.

In December 2003, the Commonwealth advised New South Wales of its decision not to proceed with the establishment of a single Australian rice export desk.

In light of the Commonwealth's decision, the NSW Government is undertaking a further NCP review of the rice marketing arrangements. The review is being conducted by IMC – Integrated Marketing Communications Pty Ltd. The terms of reference for the review are consistent with CPA requirements, and mirror those specifically approved by the NCC for the *Poultry Meat Industry Act 1986*.

The review is expected to be completed soon. New South Wales will keep the NCC apprised as to developments.

4.2 Pool Items

Agricultural and Veterinary Chemicals (New South Wales) Act 1994

The *Agricultural & Veterinary Chemicals (New South Wales) Act 1994* applies laws of the Commonwealth relating to the registration and use of agricultural and veterinary chemicals to New South Wales. The competition policy review of the Act was completed as part of a national review of the suite of Commonwealth and State agricultural and veterinary chemicals legislation by the Commonwealth Government.

A number of the issues arising from the review are being examined by working groups at the national level. Individual jurisdictions, including New South Wales, are

not in a position to progress reforms to their own agricultural and veterinary chemicals legislation until outstanding national processes are resolved.

Notwithstanding this delay at the national level, New South Wales has implemented a number of the lessons arising from the review of the *Agricultural & Veterinary Chemicals (New South Wales) Act 1994* through amendments to streamline and improve the operation of the *Stock Medicines Act 1989*. These amendments included refining controls over the supply and use of stock medicines by veterinary surgeons, strengthening requirements to follow label instructions, and allowing the use of stock medicines on any minor food producing animal when they are already registered for use on any major food producing animal.

Stock Medicines Act 1989

The *Stock Medicines Act 1989* was reviewed in 1998 as part of New South Wales' combined statutory and NCP review of 'inputs and residues' legislation. The review found that the Act provided a net public benefit through its regulation of the use of agricultural and veterinary chemicals and should be retained. However, as reported in its 2004 NCP Report, the NSW Government agreed to remove the restrictions on advertising of agricultural and veterinary chemicals; acknowledged by the NCC as the only significant competition restriction in the Act.

The *Stock Medicines Amendment Act 2004*, which repeals those advertising restrictions, and implements certain operational improvements to the Act, as discussed above, was assented to on 30 November 2004. This completes New South Wales' review and reform of the *Stock Medicines Act 1989*.

Veterinary Surgeons Act 1986

As set out in the NSW Government's 2004 NCP Report, the NCP review of the *Veterinary Surgeons Act 1986* recommended that reforms be made to the Act to maximise the net public benefits arising from the regulation of veterinary practice. The NSW Government introduced the Veterinary Practice Bill 2003 to implement a range of pro-competition reforms arising from the review, and the Bill was passed and assented to in December 2003.

The NSW Government's reforms to the Act included changes to the licensing pre-requisites, allowing competition in the provision of a range of previously restricted animal health care services, removal of prescriptive standards for vet hospitals, and partial deregulation of veterinary practice ownership restrictions.

In its 2005 assessment framework, the NCC has asked for the public interest justification for the retention of partial ownership restrictions for veterinary practices, and the commencement date of section 14(5)(a) of the *Veterinary Practice Act 2003*.

The NCP review of the Act reported the objective of the ownership restrictions was to protect consumers, animals, and other members of the profession from the potentially unethical behaviour of non-veterinary practice owners. This objective arose from the perception that non-veterinary owners were more likely to be driven by commercial

considerations than a registered vet, who must ensure compliance with the requirements of the Act for continued registration.

The review noted the perception that the pursuit of commercial considerations could result in adverse outcomes for the public, including the provision of lower quality services, unscrupulous behaviour toward consumers (cutting corners, over-servicing, exploiting the emotional bond people have with their animals), and applying pressure to employed vets to use cheaper drugs, misuse drugs, and focus on 'sales targets' at the expense of animal welfare.

Further, the review noted that veterinary practice includes the maintenance of a pharmacy and the dispensing of many scheduled drugs, including drugs of addiction. The public interest arguments which have resulted in the ownership controls for pharmacies may therefore be considered to apply equally to veterinary practices. Pharmacy ownership restrictions were retained in recognition of the importance of ensuring the highest standards of professional care in dispensing potentially dangerous drugs, and the provision of detailed professional advice on their use.

In many areas, veterinarians are administering powerful drugs to major food producing animals. In such cases, decisions based on commercial considerations over animal welfare concerns could have much broader impacts than on an individual animal and its owner, including through the human food chain.

The review recognised that there are a number of avenues available for ensuring appropriate behaviour by veterinary surgeons. The *Prevention of Cruelty to Animals Act 1979*, the *Poisons and Therapeutic Goods Act 1966*, the *Fair Trading Act 1987*, the civil courts and small claims tribunals all go some way toward deterring an unscrupulous practitioner from taking advantage of an animal owner. However, the threat of disciplinary action under the *Veterinary Surgeons Act 1986* was considered the most direct, effective, and least cost approach to ensuring ethical behaviour.

While also recognising the benefits of a broader and more flexible range of ownership options, particularly in rural locations, the review did not arrive at a unanimous position in relation to ownership restrictions.

The reforms implemented in 2003 by the NSW Government maintain the disciplinary powers of the Act in relation to those in a position to direct the business of the practice, but also allow for flexibility in business ownership. The reforms allow for any form of business association in practice ownership, but require that one or more registered veterinary practitioners have the controlling interest.

The NSW Government further relaxed the ownership restrictions by introducing section 14(5)(a) of the new Act, which exempts agricultural supply businesses from the ownership restrictions, permitting them to provide veterinary services.

The commencement of section 14(5)(a) was temporarily delayed by amendments to the Act initiated in the Legislative Council, which required the potential impact of the section on the provision of veterinary services in rural areas to be further examined. That work is now complete, and section 14(5)(a) will commence on 9 May 2005.

***Passenger Transport Act 1990* (taxis)**

In 2003, the NCC assessed New South Wales as not having met its review and reform obligations in relation to the *Passenger Transport Act 1990*, primarily on the basis that it had not implemented the recommendation of IPART's 1999 NCP review to increase the numbers of taxi licences by a fixed amount each year to 2005[5].

As discussed in the NSW Government's 2004 NCP Report, the NCP review incorrectly assumed that there was a quantitative barrier to entry to the taxi industry in New South Wales in the form of a cap on licence numbers. IPART's recommendation on increasing numbers of taxi licences directly resulted from this erroneous assumption.

The NSW Government recognised this oversight as the basis for the NCC's concerns in relation to taxi regulation in New South Wales, and offered to undertake another independent review if requested to do so by the NCC.

In its 2004 assessment, the NCC accepted the offer of another independent review, and as such, found review and reform activity in relation to taxi regulation to be incomplete[6].

Consequently, another review of the *Passenger Transport Act 1990*, as it relates to taxi services, is currently underway. New South Wales will keep the NCC apprised as to progress with the review.

Tow Truck Industry Act 1998

The NCP review of the *Tow Truck Industry Act 1998* was completed in March 2004. The review found that the licensing arrangements in New South Wales provide a net public benefit, but recommended amendments to clause 69(2) of the Tow Truck Industry Regulation 1999, which permits a tow truck operator licensed in another state to tow a vehicle into New South Wales, but does not allow it to tow a vehicle from New South Wales unless it is also licensed in New South Wales.

Clause 69(2) of the regulations has now been amended to clarify that an interstate operator/driver who is registered with the Tow Truck Authority under the *Mutual Recognition (NSW) Act 1992*, and undertakes towing work that originates in New South Wales, is also exempt from the licensing requirements. The regulations were amended 20 April 2005.

This completes the review and reform of the *Tow Truck Industry Act 1998*.

[5] NCC, *Assessment of governments' progress in implementing the National Competition Policy and related reforms:2003, Volume two: Legislation Review and Reform*, August 2003, p2.8
[6] NCC, *Assessment of governments' progress in implementing the National Competition Policy and related reforms:2004, Volume one: Assessment*, October 2004, p11.9

Dental Technicians Registration Act 1975

It is anticipated that the Minister for Health will bring forward a proposal to repeal the Act in the current parliamentary session. New South Wales will keep the NCC apprised of developments in this regard.

Legal Professions Act 1987

New South Wales has previously advised that it has implemented the majority of the recommendations arising from the NCP review of the *Legal Professions Act 1987* as well as other major competition-based reforms to the regulation of the legal profession[7]. Remaining matters outstanding were the implementation of the national model laws and reform to the professional indemnity insurance arrangements.

On 7 August 2003, the Standing Committee of Attorneys-General (SCAG) endorsed model provisions as the basis for consistent laws for the regulation of Australia's legal profession. All Australian Attorneys-General have since signed the Legal Profession Memorandum of Understanding, and agreed to use their best endeavours to implement legislation to give effect to the model provisions.

On 7 December 2004, the NSW Government introduced the Legal Professions Bill 2004 to repeal the existing legislation and replace it with the agreed model provisions. The Bill has passed the NSW Parliament and received assent on 21 December 2004.

As previously advised, at the interjurisdictional level, SCAG is developing national minimum standards for professional indemnity insurance for solicitors. New South Wales will consider arrangements for professional indemnity insurance in the context of the outcome of these deliberations.

Travel Agents Act 1986

As noted by the NCC in its 2004 assessment[8], a working party, led by the Western Australian Department of Consumer and Employment Protection in liaison with the COAG Committee on Regulatory Reform, coordinated the preparation of a response to the review of travel agents legislation as a national review process.

The Ministerial Council on Consumer Affairs (MCCA) endorsed the working party's recommendations in November 2002, with the Standing Committee of Officials of Consumer Affairs (SCOCA) tasked with overseeing the implementation of the reforms. The implementation of reforms was delayed by the need to finalise a number of issues arising from the review in relation to the operation of the Travel Compensation Fund.

A Joint Working Party has completed its consideration of the Travel Compensation Fund's premium structure and prudential and reporting requirements, and has reported to MCCA that no changes are required. MCCA has accepted the Joint Working

[7] See New South Wales' NCP Reports for the years 2000, 2003 and 2004

[8] NCC, *Assessment of governments' progress in implementing the National Competition Policy and related reforms:2004, Volume one: Assessment*, October 2004, p19.13

Party's assessment, and the review of the operation of the Travel Compensation Fund is now complete.

In relation to the remaining recommendations of the broader review of the travel agents legislation:

- The review recommended that qualification requirements in each participating jurisdiction be reviewed and amended so that they are uniform, in keeping with the spirit and intent of the Participation Agreement.

  In consultation with the industry, SCOCA developed a proposal that removed qualification requirements for domestic travel and set new qualification requirements for international travel based on competency standards that are part of a nationally recognised training package endorsed by the National Training Quality Council. The new requirements were endorsed by MCCA in August 2004.

  On 8 April 2005, the Travel Agents Amendment (Qualifications) Regulation 2005 commenced, amending the Travel Agents Regulation 2001 to implement the MCCA-endorsed uniform qualification requirements in New South Wales.

- The review recommended that the existing positive licensing framework be retained without modification, and that the current function-based definition for travel agent business remain unchanged at this time.

  These recommendations do not require legislative amendment.

- The review recommended that the current licence exemption threshold be increased to $50,000.

  This recommendation was implemented by Ministerial Order made under section 5 of the Travel Agents Act, effective 8 April 2005.

- The review recommended that the exemption for Crown-owned business entities be removed.

  This recommendation was based on the erroneous assumption that the principle of competitive neutrality requires government businesses to face the same regulatory environment as their private sector equivalents. In fact, competitive neutrality only requires that government businesses do not enjoy any net competitive advantage simply as a result of public sector ownership[9].

  New South Wales' government businesses are required to conform to competitive neutrality principles under the NSW Treasury's 'Policy Statement on the Application of Competitive Neutrality'[10].

  Further to this, one of the rationales for licensing is to protect against harm caused by private sector insolvency through mandatory participation in the Travel Compensation Fund. To extend these licensing requirements to government businesses could result in cross-subsidisation from government to the private sector.

  For these reasons, the NSW Government does not consider it necessary or appropriate to implement this recommendation.

Review and reform of the travel agents legislation is complete.

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[9] Clause 3(1), *Competition Principles Agreement*, 1995
[10] http://www.treasury.nsw.gov.au/pubs/tpp2002/tpp02-1.pdf

Trade Measurement Act 1989
Trade Measurement Administration Act 1989

The review of the *Trade Measurement Act 1989* and the *Trade Measurement Administration Act 1989* was undertaken as part of a national review of trade measurement legislation. The review recommended that existing legislation should be retained in the public interest, subject to further public benefit testing of matters relating to the sale of non pre-packed meat and the unit pricing of pre-packed goods in non-rigid containers.

MCCA agreed to conduct a public benefit test in relation to the sale of non pre-packed meat. The public benefit test was finalised in May 2004 and found that continued regulation in this area was justified in the public interest. MCCA has since endorsed the recommendations and agreed to the public release of the report. New South Wales has now fulfilled its CPA obligations regarding the sale of non pre-packed meat.

There remains an outstanding issue relating to the definition of meat that is currently being reviewed by Victoria, as the lead jurisdiction. However, New South Wales regards this as an administrative matter, ancillary to the NCP review and has written to the Victorian Minister for Fair Trading to convey this message and urge a speedy resolution of this matter.

The unit pricing of pre-packed goods in non-rigid containers was not the subject of a further public benefit test as jurisdictions have agreed to relax the current restrictions. On 19 March 2004, the Standing Committee of Officials of Consumer Affairs recommended that a draft Queensland Bill (as the lead jurisdiction) to enact that decision be forwarded to MCCA for consideration. The NSW Government is awaiting national level endorsement of the model Bill by the MCCA.

Gaming Machines Act 2001 (exclusive licence)

The NSW Department of Gaming and Racing completed an NCP review of the *Gaming Machines Act 2001* in March 2003. The review determined that there is a net public benefit arising from the harm minimisation measures contained in the Act. In its 2003 assessment[11], the NCC found that the harm minimisation measures contained in the Act fall within the range of those measures endorsed by the Productivity Commission and COAG, thus satisfying the CPA clause 5 guiding principle.

As part of its assessment, however, the NCC raised concerns in relation to the Act's granting of TAB Limited's exclusive investment licence to supply, finance and share the profits from gaming machines in hotels. While the NCC acknowledged that the arrangement has increased the level of competition in the market, it maintains that New South Wales has not established a public benefit case for making the investment licence exclusive. In its 2003 and 2004 NCP Reports, the NSW Government outlined, in detail, its public benefit case for making the investment licence an exclusive licence for TAB Limited.

[11] NCC, *Assessment of governments' progress in implementing the National Competition Policy and related reforms:2003, Volume two*, August 2003, p9.75

TAB Limited was acquired by Tabcorp Holdings Limited in July 2004. As a condition of that acquisition, the Act was amended to divest TAB of certain exclusive licences that it holds, including the exclusive investment licence. While a number of hotels had entered into contracts with TAB Limited under the arrangements, all but one of these contracts had expired by the time the Act was amended.

The *Gaming Machines Amendment Act 2004* repealed the exclusive investment licence provisions (Part 11 of the Act), and included a savings provision to allow the one remaining investment licence contract to continue until its expiry date and to prevent any extension of that contract. The amending Act was assented to on 15 December 2004.

Review and reform of the *Gaming Machines Act 2001* is complete.

Environmental Planning and Assessment Act 1979 and planning and land use reform projects

In September 2004, the NSW Government announced a major overhaul of its planning system. Under the reforms, the NSW Government will focus on strategic issues and set priorities to guide land-use decision making by local government. The reforms also aim to simplify the planning controls, improve development assessment processes, and increase flexibility in the use of developer levies for local facilities and services.

Implementation of the reforms is now underway:

- In December 2004, the Environmental Planning and Assessment Amendment (Development Contributions) Bill 2004 was tabled in the NSW Parliament. The Bill provides for greater efficiency, flexibility and innovation in the means by which councils and other planning authorities are able to obtain development contributions for the provision of essential facilities and infrastructure.
- On 8 December 2004, the Minister for Infrastructure and Planning made an order under section 22B of the *Rivers and Foreshores Improvement Act 1948* which removed the requirements for certain developments near waterways, such as houses, garages and swimming pools, to get State Government approval. This means a quicker and simpler assessment process for applicants. The changes took effect on 24 December 2004.
- The *Environmental Planning and Assessment (Model Provisions) Amendment Order 2004* and the *State Environmental Planning Policy (Repeal of Concurrence and Referral Provisions) 2004*, gazetted on 17 December 2004, came into effect on 28 February 2005. These instruments remove or amend around 1130 unnecessary and duplicative concurrence and referral requirements from State, regional and local planning instruments, resulting in quicker, simpler assessment processes.

  The changes remove or simplify concurrences in relation to connecting a road or other access to certain roads, advertising along roads, attaching conditions to consent for a Crown development, construction of farm dams, development of above-ground liquid fuel deposits, development impacting on a heritage item,

construction of rural workers dwellings, and the construction of traffic generating developments such as transport terminals, service stations, and drive-in theatres.

- The NSW Government is also taking steps to significantly reduce the number of State, regional and local planning instruments. For example, the number of State Environmental Planning Policies should be reduced from around 59 to less than 25. The number of regional environmental plans will be reduced from the current number of 44. Over the next three to five years, the State will progressively move to a scheme where there will be one local environmental plan in each local government area. This will help to prevent duplication and simplify the planning approval process.

4.3 PROGRESS WITH LIQUOR LEGISLATION REFORMS

The NCP review of New South Wales' liquor laws, the *Liquor Act 1982* and the *Registered Clubs Act 1976*, was completed in October 2003. As discussed in the NSW Government's 2004 NCP Report and 2004 Supplementary NCP Report, the major competition restrictions identified for reform by the NCP review were addressed in the *National Competition Policy Liquor Amendments (Commonwealth Financial Penalties) Act 2004*.

The 2004 reforms were focussed on the retail off-licence and hotelier's licence categories and included:

- removing the 'needs test' from the licence application process and instead providing for a social impact assessment (SIA) process to apply in relation to granting or removing (relocating) a licence; and
- providing that the fee on grant and annual licence fees applicable to those licences would be determined in accordance with the regulations and be set to cover the costs of administration, thereby lowering costs and eliminating any investment component and associated barriers to entry.

In its 2004 assessment, the NCC assessed New South Wales as having met its CPA obligations in relation to liquor licensing for 2004 on the strength of those reforms. The NCC did, however, indicate its intention to 'revisit the issue in its 2005 assessment when it anticipates that a clearer picture of the competition impacts of New South Wales' reforms should be apparent'[12].

The 2004 reforms represented the first stage in a process of implementing the recommendations of the NCP review. As outlined in New South Wales' 2004 assessment report, the NSW Government was of the view that the further implementation of the NCP review should be considered together with the outcomes of the Alcohol Summit.

The NSW Government has now released a consultation draft Bill implementing a number of outcomes of the Alcohol Summit. The consultation draft Liquor Legislation Amendment (Alcohol Summit) Bill 2005 also proposes further implementation of a number of elements arising from the NCP review, including:

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[12] NCC, *Assessment of governments' progress in implementing the National Competition Policy and related reforms:2004, Volume one: Assessment*, October 2004, p11.23

- extending the SIA process to applications and removals for the range of other liquor licence categories beyond the current hoteliers and off-licence categories; and
- for those licences not covered by the 2004 reforms, amending the fee on grant and annual licence fee structure to set, in regulations, fees which reflect the cost to government of processing an application and administering the licensing regime.

The consultation process was open to all stakeholders and the general public. The final date for receipt of submissions was 22 April 2005.

Further to these reforms, the NSW Government has now agreed to implement the remaining recommendations of the NCP review. This next group of reforms includes:

- introducing a single new Act for the regulation of liquor sales in New South Wales, including a 'plain English' rewrite of the Act;
- providing that all licence applications will be dealt with administratively, with the Licensing Court/ Liquor Administration Board being responsible for hearing appeals and disciplinary matters;
- reducing the number of licence categories from twenty-one to seven;
- allowing for bed & breakfast and farm-stay type venues to provide liquor in certain circumstances without the need for a liquor licence, but with appropriate sanctions for non-compliance;
- limiting the opportunity for the making of formal objections to licence applications as local amenity and liquor harm minimisation issues will be adequately addressed through the SIA process; and
- introducing a disciplinary system which focuses on simplicity and ease of enforcement and encourages greater compliance, while also ensuring procedural fairness.

It is the NSW Government's intention that a Bill incorporating both the Alcohol Summit reforms and the remaining NCP reforms will be introduced into Parliament during the current sitting. The passage of that Bill will result in a significantly reformed liquor licensing regime in New South Wales.

4.4 INTRASTATE AVIATION

The NCC has requested advice on New South Wales' public interest justification for issuing exclusive licences for certain intrastate air routes without competitive tenders. In addition, information is sought on whether intrastate airfares are regulated and/or whether the operators of exclusive licences receive any subsidy payments.

Licence allocation process

The allocation of exclusive air transport licences in New South Wales is subject to a competitive process, with interested parties submitting a tender prior to the granting of an exclusive licence.

When granting or refusing to grant a licence, or when specifying licence conditions, the Minister is required to have regard to the following matters and no others, as set out in section 6(3) of the *Air Transport Act 1964*:

- Needs, in relation to air transport services, of the public of New South Wales as a whole and of the public of any area or district to be served by the route or routes, or by any of the routes, specified in the application for the licence.
- Allocation of routes for public air transport services so as to foster, as far as possible, the existence of more than one airline operating in New South Wales capable of providing adequate and reasonable public air transport services and so as to discourage the development of any monopoly of public air transport services within New South Wales.
- Where the applicant is an individual, the applicant's character and suitability and fitness to hold the licence applied for and, where the applicant is a corporation, the character of the persons responsible for the management or conduct of the corporation and the suitability and fitness of the corporation to hold the licence.
- Effect, if any, on the maintenance and orderly development of adequate and reasonable public air transport services within New South Wales, of the operation of aircraft by the applicant over the route or routes specified in the application.
- Effect, if any, on the economic development of, or on the environment in, any area within New South Wales, of the operation of aircraft by the applicant over the route or routes specified in the application.
- Whether the applicant and the applicant's aircraft, pilots and passengers will be adequately insured.
- Ownership of, or the extent of the applicant's rights to operate, the aircraft to be used by the applicant.

An exception to the application of the competitive process was the allocation of exclusive licences on a number of intrastate routes to Regional Express (Rex) in March 2003. These exclusive licences were allocated at a time of significant upheaval and exceptional circumstances in intrastate aviation in New South Wales. From early 2001 to early 2003, New South Wales experienced:

- a 30% decline in the intrastate aviation market;
- the collapse of Ansett (whose subsidiaries Hazelton and Kendell held half the intrastate market);
- the loss of 13 air routes linking regional towns and Sydney (10 of those 13 routes are still vacant), with a further nine routes under threat of collapse; and
- difficulties in attracting alternative operators to take up affected air routes and networks.

The formation of Rex in August 2002 arose from a bidding process to sell Hazelton and Kendell Airlines in administration. The process encountered a lack of alternative offers from viable bidders and became critically dependent on regulatory assistance and start up funding grants from both the New South Wales and Commonwealth Governments. Part of the assistance sought was the provision of five-year exclusive

licences on regulated routes, and the airline acquisition became conditional upon Rex receiving that guarantee.

For equity reasons, the five-year exclusive licence period was extended to other operators.

The current exclusive licences are due to expire in March 2008, when it is anticipated that there will be a return to the competitive application process. New South Wales also plans to review the 50,000-passenger threshold on exclusive routes before the current licences expire. That review will include consideration of the maintenance or reduction of the threshold on exclusive routes, given the prospects for sustainable competition in smaller routes at that time. The review will be conducted in accordance with NCP principles.

Subsidies and the regulation of fares

There is no regulation of intrastate air fares in New South Wales. Operators of the regulated routes receive no subsidies or ongoing payments for providing those services. The only exception to this position on subsidies was the one-off start up funding from the New South Wales and Commonwealth Governments provided to Rex under the extraordinary circumstances outlined above.

5 NON-PRIORITY LEGISLATION REVIEW AND REFORM

Consumer Credit (NSW) Act 1995

The *Consumer Credit (NSW) Act 1995* provides for the application of the Consumer Credit Code in New South Wales.

The Ministerial Council on Consumer Affairs (MCCA) has commissioned two separate reviews of the Uniform Consumer Credit Code legislation. The first, a post-implementation review, recommended legislative changes that had the potential to impact on competition. The second, an NCP review, addressed those recommendations and went on to recommend that the current regulatory framework be maintained in the public interest but include amendments to broaden the scope of the Consumer Credit Code and enhance the pre-contractual disclosure provisions. The report was endorsed by MCCA in 2002 and referred to the Uniform Consumer Credit Code Management Committee to give effect to the recommendations.

New South Wales understands that Queensland, as the lead jurisdiction, has begun drafting amendments relating to the definitions in the Consumer Credit Code to bring a number of additional areas within the scope of the Code.

New South Wales has been tasked with drafting the new pre-contractual disclosure provisions. The NSW Office of Fair Trading is currently engaged in a community consultation process with respect to the new provisions. A final draft, incorporating any changes, will then be prepared for MCCA approval before amendments are made to the template legislation.

Exotic Diseases of Animals Act 1991

The *Exotic Diseases of Animals Act 1991* was reviewed as part of a broader NCP review of animal and plant health legislation. The review was completed in July 2002 and recommended the retention of the Act on net public benefit grounds.

The review and reform of the *Exotic Diseases of Animals Act 1991* is complete.

Human Tissue Act 1983

The NCP review of the *Human Tissues Act 1983* recommended that restrictions on the collection of homologous blood be retained in the interests of public health, but the restrictions on autologous blood be removed. The *Health Legislation Amendment Bill 2004*, implementing the recommendations of the NCP review, was passed by the NSW Parliament, and assented to on 15 June 2004.

The review and reform of the *Human Tissues Act 1983* is complete.

Motor Vehicle Sports (Public Safety) Act 1985

The NCP review of the *Motor Vehicle Sports (Public Safety) Act 1985*, conducted by the Centre for International Economics (CIE), was finalised in December 2002. As part of its consideration of that review, the NSW Government engaged the CIE to

conduct a further evaluation of the costs and benefits of one of the options proposed in the review: a co-regulatory model, with recognised industry controlling bodies authorised by the Minister to permit motor racing events conducted under their direction and control.

The evaluation of the co-regulatory model was completed in 2004. The NSW Government is considering its response to the review and the evaluation of the proposed model.

Noxious Weeds Act 1993

The review of the *Noxious Weeds Act 1993* found that the objectives of the legislation can only be achieved by restricting competition, and that the Act should be retained based on net public benefit grounds. However, the review recommended refinements to the regulation of noxious weeds to better achieve the Act's objectives of weed control.

The NSW Government has introduced the Noxious Weeds Amendment Bill 2004, which implements the recommendations of the review. The Bill removes provisions from the Act that enable a local control authority to subsidise the costs of supply of materials and equipment. The Bill is currently before the NSW Parliament.

The Bill also contains provisions for the repeal of the *Seeds Act 1982*, which was the subject of a separate NCP review.

Nursing Homes Act 1988

The Department of Health conducted a review of the *Nursing Homes Act 1988* and found that the Commonwealth's *Aged Care Act 1997* provides a comprehensive regulatory and funding system for aged care. The NSW Government has accepted the findings and repealed the legislation.

The *Health Legislation Further Amendment Act 2004,* which repeals the Act, was passed by the NSW Parliament, and was assented to on 30 November 2004.

The review and reform of the *Nursing Homes Act 1988* is complete.

Professional Standards Act 1994

New South Wales is the leading jurisdiction in Australia with respect to professional standards legislation. In August 2003, through the Standing Committee of Attorneys General, New South Wales encouraged other jurisdictions to adopt a national approach to professional standards legislation.

The *Professional Standards Amendment Act 2004* amends the legislation and implements the agreed national framework. The *Professional Standards Amendment Act 2004* passed the NSW Parliament and was assented to on 3 November 2004.

The review and reform of the *Professional Standards Act 1994* is complete.

Private Hospitals and Day Procedures Centres Act 1988

The NCP review of the *Private Hospitals and Day Procedures Centres Act 1988* is in the final stages of completion. It is anticipated that the NSW Government will consider its response to the review in the near future.

Public Health Act 1991

The NCP review of the *Public Health Act 1991* was completed in June 2003 and recommended that all provisions that impact on competition be retained on net public benefit grounds. The review also recommended that section 52 of the Act be repealed given the potential duplication of regulatory control under existing environment protection legislation. The NSW Government endorsed the review and repealed section 52 of the Act via the *Health Legislation Further Amendment Act 2004*, which was assented to on 30 November 2004.

The review and reform of the *Public Health Act 1991* is complete.

Public Trustee Act 1913

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

New South Wales considers that review and reform of the *Public Trustee Act 1913* is complete.

Retail Leases Act 1994

The *Retail Leases Act 1994* regulates the relationship between landlords and small to medium sized retail tenants. The NCP review of the Act recommended that the Act be retained on net public benefit grounds and minor amendments be made to streamline administrative requirements. The NSW Government endorsed the review and relevant changes were made to the Act through the *Retail Leases Amendment Act 2004*, which was assented to on 3 November 2004.

The review and reform of the *Retail Leases Act 1994* is complete.

Rural Lands Protection Act 1998

The NCP review of the *Rural Lands Protection Act 1998* was finalised in September 2004. The review found that the provisions of the Act support, rather than restrict, competition and the operation of the market by addressing market failure through reducing spill-overs. The Government has endorsed the findings of the review.

The review and reform of the *Rural Lands Protection Act 1998* is complete.

Seeds Act 1982

The *Noxious Weeds Amendment Bill 2004* will repeal the *Seeds Act 1982*. The Bill is currently before the NSW Parliament.

Stock (Artificial Breeding) Act 1985

The review of the *Stock (Artificial Breeding) Act 1985* found that most of the provisions of the Act generate public benefits and should be retained. It was considered, however, that it would be more efficient and effective to regulate the artificial breeding industry through the general legislation controlling veterinary practices and stock diseases, rather than through a separate Act. The review also recommended a national approach to licensing.

Licences to collect semen and embryos are no longer required under New South Wales legislation as the Commonwealth (through the Australian Quarantine and Inspection Service) performs this function and ensures compliance with international quarantine requirements.

The *Stock Diseases Amendment (Artificial Breeding) Act 2004*, which repeals the Act and gives effect to the recommendations of the review has passed the Parliament and was assented to on 15 June 2004.

The review and reform of the *Stock (Artificial Breeding) Act 1985* is complete.

Trustee Companies Act 1964

As previously advised, the review of the regulation of trustee companies has been conducted at the national level, under the auspices of the Standing Committee of Attorneys-General (SCAG).

The review recommended that there be uniform licensing standards and that the Australian Prudential Regulation Authority (APRA) supervise the prudential activities of trustee companies under uniform legislation. The Commonwealth initially refused to allow APRA to act as the regulator but later agreed to reconsider its position following a submission from New South Wales on behalf of the States.

On 17 March 2005, the Commonwealth Attorney-General wrote to the NSW Attorney-General to inform him that a decision had been made not to involve APRA in the supervision of trustee companies.

The Commonwealth's recent decision now means that SCAG will have to revisit the proposal as the model legislation cannot be progressed until the prudential supervision issue is resolved. New South Wales will continue to play a leading role in this matter.

6 NEW LEGISLATION AND GATEKEEPING

Clause 5(5) of the CPA obliges governments to require all proposals for new legislation that restricts competition to be accompanied by evidence that the legislation is consistent with clause 5(1); that is, that the benefits of the restriction to the community as a whole outweigh the costs, and that the objectives of the legislation can only be achieved by restricting competition.

New South Wales' 2004 NCP Report set out in detail the operation of the process that ensures this obligation is met for all legislative and regulatory proposals in New South Wales. As part of its 2005 assessment framework, the NCC has asked whether there have been any changes to those arrangements. There have been no changes to these arrangements since the 2004 assessment.

In summary, New South Wales' gatekeeping arrangements are as follows:

- Regulatory impact analysis is required for all new legislation, regulation and quasi-regulation in New South Wales.
- The NSW Cabinet Office scrutinises all legislative proposals for compliance with clause 5(1) of the CPA and regulatory best practice, and provides advice to the Premier, as the chair of Cabinet, on the regulatory impact of new proposals and, where relevant, compliance with CPA principles.
- The NSW Cabinet Office works with agencies early in the preparation of major new policy and legislative proposals including to encourage compliance with CPA principles.
- The *Subordinate Legislation Act 1989* sets out when a formal Regulation Impact Statement is required for a statutory rule. It also requires Ministers to ensure that the guidelines set out in Schedule One to the Act are complied with in the preparation of all statutory rules.
- The Legislation Review Committee was established as an independent Parliamentary committee that has broad powers to scrutinise and report to Parliament on a range of issues in relation to proposed Bills and regulations.
- The *Subordinate Legislation Act* requires that all regulations are repealed and remade every five years, unless the Governor postpones the repeal temporarily. In the overwhelming majority of cases, a Regulation Impact Statement is required.

Work continues in New South Wales on a revised package of materials for agencies on regulatory best practice, and improved guidelines for conducting regulatory impact analysis.

New South Wales notes that the NCC has formed its own view of what constitutes a set of 'best practice' principles for gatekeeping. Notwithstanding this, the CPA does not prescribe any particular model, nor does it provide for the NCC to determine such a model.

In its 2005 assessment framework, the NCC has indicated that it may undertake its own checks of compliance by examining whether particular pieces of new legislation meet the clause 5(1) guiding principle. Clause 5(10) of the CPA requires jurisdictions

to report on progress towards achieving the legislation review and reform agenda at clause 5(3), and does not require jurisdictions to report against the gatekeeping obligations at clause 5(5).

Having said this, New South Wales would be happy to discuss the operation of the gatekeeping mechanisms in relation to any particular piece of new legislation with the NCC on a case-by-case basis.

APPENDIX A
THE EFFECT OF ETEF ON ENERGY DERIVATIVES TRADING

It remains the case that there is no evidence that operation of the ETEF has reduced energy related financial market trading activity. The volume of electricity derivatives traded in New South Wales grew during 2004, and remains above pre-2001 levels (prior to the introduction of the ETEF).

Australian Financial Markets Association (AFMA) data shows that New South Wales still has 13 parties trading in its AFMA forward electricity prices compared with 12 in Victoria, eight in Queensland and six in South Australia. This demonstrates that there is an active market in New South Wales.

Furthermore, the forward electricity prices in New South Wales for both peak and off-peak lie within the bounds set in other regions of the NEM. The operation of ETEF is not resulting in the distortion of prices. AFMA statistics on over-the-counter electricity contracts with New South Wales retailer counterparties also dispel the notion that it is more difficult to contract with New South Wales retailers because a proportion of their load is covered by ETEF.

The proportion of load covered by ETEF continues to decline. The proportion of the New South Wales load covered by ETEF fell to 28 per cent in 2004. If viewed as a whole, the proportion of NEM load covered by ETEF has fallen from 15 per cent in 2001 to 11 per cent in 2004.

Calendar Year	Percentage of NSW load covered by ETEF	Percentage of NEM load covered by ETEF
2001	37%	15%
2002	34%	14%
2003	31%	12%
2004	28%	11%

It remains the case that New South Wales generators have not made contributions to ETEF since July 2002.

APPENDIX B

SIGNIFICANT NSW GENERAL GOVERNMENT SECTOR AGENCIES REQUIRED TO IMPLEMENT PRICING PRINCIPLES

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

No.	Government Agency/Activity grouped by Government Purpose (ABS)[1]	GGE (ABS)[2]	Treasury Monitor[3]	User Charges[4]	Sig[5] >$2 m	Minor[6] <$2 m
39	Office of the Children's Guardian	v	v	v		v
40	Rental Bond Board	v	v			
41	Women, Dept for[7]	v	v	v		v
	(07) Housing & Community Amenities					
42	Aboriginal Housing Office	v	v	v	v	
43	Environmental Planning and Assessment Fund	v	v	v	v	
44	Honeysuckle Development Corporation	v	v	v	v	
45	Home Purchase Assistance Fund	v	v	v		v
46	Infrastructure, Planning and Natural Resources, Dept of	v	v	v	v	
47	Lands, Dept of	v	v	v	v	
	(08) Recreation & Culture					
48	Art Gallery of NSW	v	v	v	v	
49	Arts, Ministry for the	v	v	v		v
50	Australian Museum	v	v	v	v	
51	Casino Control Authority	v	v	v		v
52	Centennial Park and Moore Park Trust	v	v	v	v	
53	Environment and Conservation, Dept of	v	v	v	v	
54	Film and Television Office, NSW	v	v	v		v
55	Gaming and Racing, Dept of	v	v	v	v	
56	Heritage Office	v	v	v		v
57	Historic Houses Trust of NSW	v	v	v	v	
58	Luna Park Reserve Trust	v	v	v		v
59	Museum of Applied Arts and Sciences	v	v	v	v	
60	Natural Resources Commission	v	v			
61	Royal Botanic Gardens and Domain Trust	v	v	v	v	
62	State Library of NSW	v	v	v	v	
63	State Sports Centre Trust	v	v	v	v	
64	Stormwater Trust	v	v			
65	Sydney Olympic Park Authority	v	v	v	v	
	(09) Fuel & Energy					
66	Coal Compensation Board	v	v	v		v
67	Electricity Tariff Equalisation Ministerial Corp.	v	v			
68	Energy, Utilities and Sustainability, Dept of	v	v	v		v
69	Sustainable Energy Development Authority[7]	v	v			
	(10) Agriculture, Forestry, Fishing & Hunting					
70	Primary Industry, Dept of	v	v	v	v	
71	Rural Assistance Authority	v	v			
72	NSW Food Authority	v	v	v		v
	(11) Mining, Mineral Resources, Manufacturing & Construction					
73	Building & Construction Industry - Long Service Payments Corporation	v	v			
	(12) Transport & Communications					
74	Motor Accidents Authority	v	v			
75	Independent Transport Safety and Reliability Regulator	v	v	v		v
76	Roads and Traffic Authority	v	v	v	v	
77	Transport, Ministry of	v	v	v	v	

No.	Government Agency/Activity grouped by Government Purpose (ABS)[1]	GGE (ABS)[2]	Treasury Monitor[3]	User Charges[4]	Sig[5] >$2 m	Minor[6] <$2 m
78	Waterways Authority	v	v	v	v	
	(13) Other Economic Affairs					
79	Commerce, Dept of	v	v	v	v	
80	Government Business, Office of [7]	v	v	v	v	
81	Government Procurement, Office of [7]	v	v	v	v	
82	Independent Pricing & Regulatory Tribunal	v	v	v		v
83	Insurance Ministerial Corporation[7]	v	v	v	v	
84	Land and Property Information NSW	v	v	v	v	
85	Liability Management Ministerial Corporation	v	v			
86	State and Regional Development, Dept of	v	v	v	v	
87	Superannuation Administration Corporation	v	v	v	v	
88	Tourism, Sport and Recreation, Dept of	v	v	v	v	
89	WorkCover Authority	v	v	v	v	
90	Worker's Compensation (Dust Diseases) Board	v	v	v		v
	(14) Other Purposes					
91	Crown Leaseholds Entity	v	v	v	v	
92	Crown Property Portfolio	v	v	v	v	
93	Crown Finance Entity	v	v	v	v	

KEY

[1] Categories as per the Australian Bureau of Statistics (ABS) in *Standard Economic Sector Classifications of Australia (SESCA) 1998*.
[2] General Government Enterprises (GGEs) as defined by the ABS in *GFS Australia: Concepts, Sources and Methods*.
[3] These agencies/activities are monitored by Treasury on the basis of a risk and materiality assessment.
[4] A user charge is a voluntary payment by a consumer to a PTE or a general government entity for services provided. Payment is commercial rather than regulatory and provides an identifiable benefit to the payer. (ABS: *GFS Australia: Concepts, Sources and Methods*). The existence of user charges is a broad indicator of a business activity.
[5] Significant > $2 million user charges revenue p.a. (as based on 2004–2005 Budget estimates).
[6] Minor < $2 million user charges revenue p.a. (as based on 2004–2005 Budget estimates).
[7] Denoted agencies have been restructured or renamed in 2004-05 but appear as separately reported agencies in the 2004-05 Budget estimates.

APPENDIX C
NSW GOVERNMENT BUSINESS ENTERPRISES THAT HAVE BEEN OR ARE INTENDED TO BE CORPORATISED OR PRIVATISED

No.	Government Business Enterprise grouped by Industry	ABS PTE[1]	Treasury Monitor[2]	Category[3]	Already Priv.	Already Corp.	Date Priv.(P)/Corp.	Comments
	Electricity							
1	Australian Inland	v	v	1		v	1/3/96	Absorbed Broken Hill Water Board
2	Country Energy	v	v	1		v	1/7/01	Merger of former Advance Energy, Great Southern Energy and NorthPower.
3	Delta Electricity	v	v	1		v	1/3/96	
4	Energy Australia	v	v	1		v	1/3/96	
5	Eraring Energy	v	v	1		v	2/8/00	Formerly part of Pacific Power
6	Integral Energy	v	v	1		v	1/3/96	
7	Macquarie Generation	v	v	1		v	1/3/96	
8	Pacific Power International				v		2/7/03(P)	Former subsidiary of Pacific Power
9	Power Coal Pty Ltd	v	v		v		29/7/02(P)	Former subsidiary of Pacific Power
10	Snowy Hydro Limited	v	v	3		v	28/6/02	Jointly owned with Victoria and the Commonwealth.
11	TransGrid	v	v	1		v	14/12/98	
	Finance							
12	Axiom Funds Management Corporation			3	v		16/5/97(P)	
13	Government Insurance Office (GIO)	PFE	v	4	v		16/7/92(P)	
14	NSW Treasury Corporation (TCorp)		v	1		v	1983	
15	State Bank of NSW		v	4	v		31/12/94(P)	
	Gaming and Recreation							
16	NSW Lotteries	v	v	1		v	1/1/97	
17	Totalizator Agency Board of NSW (TAB)	v	v	4	v		6/98(P)	
	Ports and Waterways							
18	Newcastle Port Corporation	v	v	1		v	1/7/95	
19	Port Kembla Port Corporation	v	v	1		v	1/7/95	
20	Sydney Ports Corporation	v	v	1		v	1/7/95	
	Transport							
21	Freight Rail Corporation	v	v	4	v		21/2/02(P)	Sold in conjunction with sale of NRC
22	RailCorp	v	v	1		v	1/1/04	Merger of Rail Infrastructure Corporation and State Rail Authority.
23	Sydney Ferries	v	v	1		v	1/7/04	
	Water							
24	Coleambally Irrigation	v			v		9/6/00(P)	
25	Hunter Water Corporation	v	v	1		v	1/1/92	
26	Jemalong Irrigation	v			v		03/95(P)	
27	Western Murray Irrigation	v			v		23/2/95(P)	
28	Murray Irrigation	v			v		3/3/95(P)	
29	Murrumbidgee Irrigation	v		1	v		12/2/99(P)	
30	State Water	v	v	1		v	1/7/04	
31	Sydney Water Corporation	v	v	1		v	1/1/95	

No.	Government Business Enterprise grouped by Industry	ABS PTE[1]	Treasury Monitor[2]	Category[3]	Already Priv.	Already Corp.	Date Priv.(P)/Corp.	Comments
	Misc							
32	First Australian National Mortgage Acceptance		v	5	v		31/10/94(P)	NSW Gov 25% shareholder only
33	Fish Marketing Authority			3	v		31/10/94(P)	
34	Jenolan Caves Reserve Trust	v		3				
35	State Forests of NSW	v	v	1				Reform options including corporatisation are currently being considered.
36	Landcom	v	v	1		v	1/1/02	
37	Superannuation Administration Corporation	v	v	1		v	26/7/99	
38	Sydney Market Authority				v		1/11/97(P)	
39	Waste Recycling and Processing Corporation	v		1		v	1/9/01	

KEY

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.