SEVENTH ANNUAL REPORT TO THE NATIONAL COMPETITION COUNCIL

VOLUME 1: REPORT

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PART 1 – COMPETITION PRINCIPLES AGREEMENT

1. LEGISLATION REVIEW

1.1 Background

Under Clause 5 of the *Competition Principles Agreement* (CPA), the Queensland Government, along with all other jurisdictions, is required to review, and where appropriate reform, all existing legislation (as at June 1996) that included restrictions on competition. The guiding principle is that legislation should not restrict competition unless it can be demonstrated that:

- the benefits of the restriction to the community as a whole outweigh the costs; and
- the objectives of the legislation can only be achieved by restricting competition.

The CPA also requires jurisdictions to:

- examine all new legislation that restricts competition and provide evidence that the proposed new legislation is consistent with the guiding principle as outlined above; and
- systematically review all legislation that restricts competition at least once every 10 years to ensure the legislation remains consistent with the guiding principle.

The deadline for completing the review and reform of existing legislation was 31 December 2000. In November 2000, the Council of Australian Government (CoAG) agreed to extend the deadline for the completion of the legislation review and reform program to 30 June 2002. Satisfactory implementation of reforms by the due date may include, where justified by a public interest assessment, having in place a firm transitional arrangement that may extend beyond the revised deadline.

In November 2000, CoAG also agreed that, in assessing whether the threshold requirement of Clause 5 has been achieved, the NCC should consider whether the conclusion reached in a review report is within a range of outcomes that could reasonably be reached based on the information available to a properly constituted review process. Within the range of outcomes that could reasonably be reached, it is a matter for the responsible government to determine what policy is in the public interest.

The *Agreement to Implement the National Competition Policy and Related Reforms* requires jurisdictions, when proposing new national regulatory standards through Ministerial Councils and other national standards-setting bodies, to set such standards in accordance with the CoAG Principles and Guidelines for National Standard Setting and Regulatory Action. The Commonwealth Office of Regulation Review (ORR) provides advice to the NCC on jurisdictions' compliance with the principles and guidelines.

1.2 Scheduled Reviews

All jurisdictions were required to develop a timetable for reviewing all existing legislation (as at June 1996) that included restrictions on competition. All jurisdictions are also required to report annually on progress in relation to that timetable. Details in relation each piece of legislation on the review timetable are provided in Attachment 1 (*Legislation Review Schedule: Queensland).*

The review and reform of legislation in Queensland's Legislation Review Schedule is essentially complete or very well advanced, in that, for all but two pieces of legislation:

- review and reform have been completed;
- completion of review and/or reform awaits the outcome of a National review;
- the legislation has been reformed without review;
- further investigation has found no review was required; and
- review and reform, while not yet complete, is expected to be in place by June 2003 or will be sufficiently well advanced by that date to demonstrate the Government's commitment to meeting its legislation review obligations for the legislation.

For the remaining two pieces of legislation, the *Land Act 1994* and the *Ambulance Services Act 1991*, reviews have been completed and the Government is considering the recommendations, but is yet to decide upon the timing of its response.

1.3 Priority Review Areas

The NCC is seeking information on progress with the review and reform of a number of pieces of legislation which it has identified as priority areas for the 2003 assessment. That information is provided below and in the relevant Attachments.

1.3.1 Electricity and Gas

Full Retail Contestability for Electricity

In its 2002 Assessment the NCC argued that the outcome of Queensland's benefit/cost assessment of full retail contestability (FRC) for electricity was not compliant with the NCP electricity reform agreements. The NCC noted that "there is an opportunity for all governments to amend the electricity reform agreements before the 2003 NCP assessment," and that "Governments may choose to do this to relieve Queensland of obligations under the electricity agreements, having regard to Queensland's view that a net benefit has not been established for the introduction of full retail contestability." For the 2003 assessment, the NCC is seeking a report on: the response of the National Electricity Market (NEM) jurisdictions to Queensland's request that its obligation to introduce full retail contestability (FRC) for electricity be waived; and Queensland's approach following those responses.

Progress in relation to Queensland's approaches to other jurisdictions is outlined in Section 8.1. In the meantime, the Queensland Government continues to support the further development of a competitive market in electricity. Queensland is actively participating in

the processes through the Ministerial Council on Energy and the NEM Ministers Forum to improve arrangements regarding NEM governance, transmission planning and regulation.

National Electricity Code Derogations

For the 2003 assessment, the NCC is seeking confirmation that all of Queensland's derogations to the National Electricity Code (Code) have expired. Queensland's remaining derogations in the Code date from commencement of the NEM and are largely technical in nature: either being consistent with those existing in other jurisdictions; or relating to Queensland's specific network requirements. Queensland recently obtained an extension of two pre-existing derogations related to: (i) forward looking loss factors; and (ii) technical derogations. Section 8.2 includes details on these derogations and the reasons for their extensions.

National Transmission Grid Interconnection

The NCC is seeking a report on the measures adopted to address concerns expressed in its 2001 and 2002 assessments that current NEM arrangements may impede effective inter-jurisdictional transmission network interconnection. Queensland is committed to providing for strong inter-regional competition, including facilitating adequate interconnection, embracing national consistency and allowing for market entry and growth in the number of market participants. Queensland is participating with other relevant governments through the NEM Ministers' Forum, in a review of the framework for transmission, including the development of a truly national grid. Further information on this issue is included in Section 8.3.

Institutional arrangements

The NCC is seeking a report on the measures adopted to address concerns expressed in its 2001 and 2002 assessments in relation to the effectiveness of the NEM's institutional framework. Queensland is supportive of and is actively participating in the examination of institutional arrangements through the concurrent processes being undertaken by the Ministerial Council on Energy (MCE) and the NEM Ministers' Forum. Further information on this issue is included in Section 8.4.

Parer Review

The NCC has requested that jurisdictions report on any reform proposals in the Parer Report and the NEM Ministers' Forum Review that have NCP implications. Queensland views the Parer Review as an input into the debate on energy market reform but strongly opposes any view that the Review's recommendations should form a benchmark for the NCC's 2003 assessment. Formal processes have been established to consider these recommendations in the context of responding to broad energy market issues. The Ministerial Council on Energy and the NEM Ministers' Forum is developing a response on key energy policy issues and will report to CoAG in mid 2003.

The NCC has also made a specific request to Queensland about concerns expressed in relation to the Queensland's Benchmark Price Agreement (BPA). Queensland considers such concerns to be unfounded and based on a lack of understanding of the BPA's design and relationship with Queensland's electricity community service obligation (CSO).

Further information on Queensland's response to the Parer Review and concerns about the BPA is included in Section 8.5.

Full Retail Contestability for Gas

The NCC considers that Queensland has not fully met its national gas reform obligations because it deferred the introduction of FRC for gas from 1 September 2001 to 1 January 2003 without the consent of all governments as required by the NCP gas reform agreements (all governments other than the Commonwealth approved the deferral). Therefore, as part of its 2003 assessment, the NCC is seeking confirmation that FRC for natural gas has been implemented in Queensland.

Consistent with its overall approach to the implementation of competition reform generally, the introduction of gas FRC in Queensland will be contingent on the Government's consideration of a cost-benefit analysis undertaken by independent consultants. A Government decision on this matter is anticipated by May 2003. Further information is provided in Section 9.1.

Gas Act 1965 and Petroleum Act 1923

The NCC is seeking a report on the whether the proposed Petroleum and Gas Bill 2002 has been enacted, including the public interest case for any remaining restrictions on competition in the legislation.

In reviewing and reforming the *Petroleum Act 1923* and the *Gas Act 1965*, it had been intended to consolidate the revised legislation by way of the combined Petroleum and Gas Bill 2002. Following consideration of issues raised in response to the release of the exposure drafts of the consolidated Bill in 2001, it was decided to continue to rely on separate pieces of legislation, namely, the proposed Gas Supply Bill and the Petroleum and Gas (Production and Safety) Bill.

Gas Supply Bill

The Gas Supply Bill, which deals with distribution pipeline licensing, retail sale of fuel gas and insufficiency of supply, is now the responsibility of the Department of Innovation and Information Economy Sport and Recreation Queensland. A review of the proposed legislation, including its role in implementing the CoAG Natural Gas Pipelines Access Agreement, is being finalised as part of the development of the new legislation. The new Act is expected to be in place by June 2003.

Petroleum and Gas (Production and Safety) Bill

The Petroleum and Gas (Production and Safety) Bill, which regulates exploration, production and processing pipeline and facility licensing, safety and technical standards, is the responsibility of the Department of Natural Resources and Mines.

Although the *Petroleum Act 1923* may need to be retained in a limited way to preserve the rights of holders of petroleum tenures granted before 23 December 1996, exploration and production tenures granted after that date and pipeline licences will be administered under the new Act. The new Act is expected to be in place by September 2003. It will

incorporate all identified reforms identified by the Upstream Industry Working Group (UIWG) relating to acreage management.

Further details in relation to this review are provided in Attachment 2.

AS4564/AG864 Gas Standard

The NCC is seeking a report on whether Queensland has implemented the new AS4564/AG864 quality standard for general purpose natural gas.

The standard was released on 28 January 2003. Stakeholders are being advised pending implementation under Regulation, which is expected to occur in the next 3 months.

Petroleum (Submerged Lands) Act 1984

The NCC is seeking a report on progress with amendments to this legislation to implement the outcome of the National NCP review.

This Act is mirror legislation to the *Petroleum (Submerged Lands) Act 1967* (Commonwealth). Amending legislation will be prepared once the review and reform of the Commonwealth legislation has been finalised.

1.3.2 Primary Industries

Agricultural and Veterinary Chemicals

The NCC is seeking information on how Queensland has addressed the outstanding issues from the review of the national agricultural and veterinary chemical registration scheme, namely: licensing of agricultural chemical manufacturers; regulation of low risk chemicals; contestability of chemical assessment services; and compensation for third party access to chemical assessment data.

The NCC is also seeking reports on: the public interest case for Queensland's decision to retain, as part of the registration process, an assessment of whether the efficacy claimed by a supplier is appropriate; and implementation of the recommended reforms to 'control of use' legislation.

Most of the issues raised by the NCC are not relevant to Queensland as they relate to amendments required to Commonwealth legislation [*Agricultural and Veterinary Chemicals Code Act 1994* ("Agvet Code Act")] and accordingly should be addressed by Agriculture Fisheries & Forestry Australia (AFFA) (see also Table 4.6 of the NCC's 2002 NCP Assessment).

The *Agricultural and Veterinary Chemicals (Queensland) Act 1994* is the State Act that applies the Commonwealth Agvet Code as law in Queensland. Amendments to this legislation will not be required as a result of amendments to the Agvet Code.

In regard to the matter of "claimed efficacy provisions", Queensland and other States and Territories did argue for the continued assessment of the appropriateness of the "claimed efficacy" provisions, via the inter-Governmental response to the national review. As this issue is yet to be resolved, it would be appropriate for Primary Industries Ministerial

Council and/or Standing Committee to address this issue as it is common to all jurisdictions.

Queensland intends to amend the State's "control of use" legislation (to cater for low regulatory risk chemicals) in conjunction with the amendments to the Commonwealth's Agvet Code Act. It is proposed to allow for a reduction in the controls over the use of the lowest risk category products providing these are used in accordance with conditions set by the Australian Pesticides and Veterinary Medicines Authority (previously the National Registration Authority for Agricultural and Veterinary Chemicals).

In terms of other NCP-related amendments to Queensland's "control of use" legislation, the *Agricultural and Veterinary Chemicals Legislation Amendment Act 2002*, enacted in late 2002, amended the *Agricultural Chemicals Distribution Control Act 1966* (ACDC Act) and *Chemical Usage (Agricultural and Veterinary) Control Act 1988* (Chem Use Act) to implement all relevant NCP reforms within the State's area of responsibility.

The ACDC Act has been amended to extend the current business licensing arrangements from aerial to ground businesses and to make other minor changes in line with the NCP review requirements. The Chem Use Act has been amended to introduce controls over the use of agricultural and veterinary chemicals by veterinary surgeons. The amendments will mean that Queensland legislation will be consistent with similar legislation in other States and Territories.

Consequential amendments to the regulations required to give full effect to the amendments to the ACDC Act are currently being progressed. The issues examined in the NCP review of the principle Acts should mean that a further review in relation to the Regulations is not required. Nonetheless, this matter will be considered further in 2003.

Further details in relation to this review are provided in Attachment 2.

Fisheries Legislation

The NCC is seeking a report on the timelines for completing the reviews of Queensland's fisheries legislation, and on reform implementation, including the establishment of clear timelines.

As reported in 2002, the NCP Review of Queensland's fisheries legislation has been completed and endorsed by the Government in October 2001. The endorsed approach includes examining each of the State's fisheries on an individual basis – recognising their diverse characteristics – and applying the resource management principles developed as part of the review process and the NCP requirements in determining and justifying the appropriate level of regulation required for each fishery. Progress in implementing the outcomes of the Review are outlined below and in more detail in Attachment 3.

The NCP Review of Queensland fisheries legislation found that the retention of restrictions on competition was justified due to the market failure arguments relating to the 'common property' nature of fisheries resources. However, the application of NCP principles identified some areas where the desired benefits of regulatory intervention could be achieved in some fisheries in less restrictive ways. The Review also recommended a framework and management principles to ensure the integration of NCP principles into the ongoing fisheries management review cycle.

In relation to the *Fisheries Act 1994* the Review recommended the objectives be amended to fully incorporate the definition, goals and guiding principles under the National Strategy for ESD to provide greater clarity and direction to resource managers. Also, that provision be made in the Act to enable the temporary transfer of fishing entitlements.

In relation to the subordinate legislation, including regulations and management plans, the Review recommended that the complexity of licensing arrangements that applied to Queensland fisheries be simplified, including the abolition of a number of fishery access and personal licence types on the basis that they either could not be justified in meeting the objectives of the Act, or they provided barriers to entry and exit from the industry. The Review also recommended a move to greater levels of cost recovery to achieve better alignment of licence fees with costs of management. Of particular concern to the Review was the removal of cross subsidisation, the removal of barriers to entry in the marketing and processing sectors and the removal of differentials between first issue and renewal fees.

In regard to individual fisheries, the NCP Review acknowledged that variation in the mix of input and output controls across the various fisheries was justifiable given the marked variability in the biological, environmental and economic characteristics of Queensland's fisheries. However, the Review did recommend minor changes to these management measures for some fisheries. Of great concern to the Review was the need to address latent fishing effort in the East Coast Trawl and Reef Line fisheries on the basis that the input control management regimes would be unlikely to achieve management objectives should market forces encourage higher than current levels of exploitation. Consequently, the Review recommended that management mechanisms be introduced into these fisheries to cap fishing effort and, where appropriate, reduce fishing effort. A number of other fishery specific recommendations were also made.

The Queensland Government has accepted all but one of the recommendations of the NCP Review (the exception relates to the introduction of recreational fishing licences). The Government has adopted a 'top down' approach to amending fisheries legislation for implementing NCP reform, thereby allowing those components of current fisheries legislation that offend NCP principles to the greatest extent to be afforded the highest priority in terms of reform implementation.

In January 2001 major amendments were made to the East Coast Trawl Fishery Management Plan in line with the NCP Review recommendations. The focus of amendments was the implementation of a substantially revised effort-capping scheme to cap effort at 1996 levels. Fully transferable effort units were allocated to fishers based on past fishing history. A government and industry funded buyback scheme was also implemented to further reduce latent effort from the Fishery. Management mechanisms were also introduced to provide a basis for ongoing effort reduction based on specific targets identified in the Management Plan. The "two-for-one" boat replacement policy was removed from management arrangements to "free-up" the trading of licences and vessel replacements. Since these amendments came into effect in January 2001, the number of authorities operating in the Fishery has been reduced through private trading from 740 to around 500.

In early 2002 a major review of QFS services and service fees was commenced to ascertain the full costs of management, research, monitoring and compliance attributable to all Queensland fisheries. Concurrent with this, a review was also commenced of licensing arrangements that apply to Queensland fisheries with the view to rationalising licensing

arrangements in accordance with NCP Review recommendations. It is anticipated the outcome of both reviews will be considered by Government in early 2003 with the view to releasing a public discussion paper and public benefit test as part of the consultation phase of this initiative. Subject to the outcomes of Government's considerations it is anticipated that significant reform to fisheries licensing arrangements and licence fees will be implemented by July 2003. This initiative will result in the implementation of major NCP reform in all Queensland fisheries.

In late 2002 the objectives of the *Fisheries Act 1994* were amended to fully reflect the definition, goals and guiding principles of the National Strategy on ESD. The Act was also amended to make provision for the temporary transfer of fishing authorities.

In late 2002 the Queensland Government released for public consultation a number of Regulatory Impact Statements (including draft public benefit tests) incorporating proposed management reforms for the Inshore Finfish Fishery (Tailor and Spotted Mackerel components), the Freshwater (recreational) Fishery and the Reef Line Fishery. As a result, total catch quotas have now been implemented in legislation for the commercial take of Tailor and Spotted Mackerel, and minor amendments have now been implemented in the Freshwater Fishery Management Plan. The public consultation phase of the proposed amendments to the Reef Line Fishery is currently underway with the view to finalising a management plan for this fishery by late 2003. A core element of the above proposals is the implementation of NCP Review recommendations relevant to these fisheries.

The staged implementation of reforms is consistent with the November 2000 changes to the NCP agreements whereby satisfactory implementation of reforms may include, where justified by a public interest assessment[1], having a firm transitional arrangement that may extend beyond the revised legislation review and reform deadline.

Food Production (Safety) Act 2000 (Dairy and Meat Food Safety Schemes)

The NCC is seeking information on the public interest case supporting any restrictions on competition remaining in the *Food Act 1981*.

The responsibility for primary production-related food safety does not reside in the *Food Act 1981*, but rather resides in the *Food Production (Safety) Act 2000*. Therefore, the new Dairy and Meat Food Safety Schemes (FSSs) have been made under the *Food Production (Safety) Act 2000*, which has replaced both the former *Meat Industry Act 1993* and the *Dairy Industry Act 1993* (at least in regard to the food safety provisions of these Acts). There are no restrictions on competition in the new Meat and Dairy FSS as these schemes merely implement food safety standards in Queensland in a manner consistent with the CoAG Inter-Governmental Food Regulation Agreement of November 2000 which requires each jurisdiction to implement food safety standards consistent with national standards developed by Food Standards Australia New Zealand (formerly the Australia New Zealand Food Authority).

Further details in relation to this review are provided in Attachment 2.

[1] ACIL Consulting, National Competition Policy Review of the Queensland Fisheries Act 1994, January 2000, p.xvi

Veterinary Surgeons Act 1936

The NCC is seeking information on the reform, or public interest arguments for retention, of restrictions related to:

- the composition of the registration board;
- the 'good fame and character' registration criteria;
- the general reservation of veterinary practice; and
- the requirement for prior approval of premises.

Board Composition – the NCC is concerned that veterinarians dominate the registration board in Queensland on the basis that the inclusion of a minority of veterinarians is sufficient to ensure access to relevant expertise.

Queensland considers the composition of the Veterinary Surgeons Board does not restrict competition in terms of imposing any meaningful restrictions on entry or business conduct. The Board is composed of veterinarians from government, education and private practice in addition to consumer representation so as to provide the knowledge base and balanced input required in resolving complaints relating to the treatment of animals. In defending professional misconduct action, veterinarians have a choice to be heard by the Board that has limited punitive powers not extending to suspension or removal from the Register, or by the Veterinary Tribunal whose decision is appealable to the District Court. Further, the legislation provides for specific entry requirements that preclude arbitrary exclusion of new applicants by the Board. In the unlikely event of such an arbitrary exclusion, the decision would be subject to Judicial Review (*Judicial Review Act 1991*).

Good Fame and Character -- The NCC has expressed concern that Queensland's registration criteria potentially allow the setting of a higher than necessary barrier to entry by requiring an applicant be of "good fame and character" – a criterion which, on its own, the NCC considers leaves considerable doubt as to how it is applied. The NCC considers this doubt could be addressed by identifying specific character disqualifications, such as prior offences, either in the Act, in regulations or in guidelines made available to the public.

Entry to the profession in Queensland is on the basis of qualification criteria that are uniformly recognised throughout Australia; and the applicant's "good fame and character" as demonstrated by absence of specific offences.

For first time registrants after graduation, "good fame and character" is demonstrated by provision by the applicant of 2 references from course lecturers of their choice. Where registered elsewhere at time of application, "good fame and character" is demonstrated by provision of a letter from that registering authority that there are no punitive measures currently imposed on the veterinarian. Both processes provide the capability to identify specific character disqualifications.

This information is conveyed to any person enquiring about registration and will be on the Board's website when established.

Reservation of Practice -- The NCC has stated a preference for specific reservations over general ones, such as in the Queensland legislation, on the basis that specific reservations allow competition from lesser qualified providers except where this would clearly be

harmful and where there are no less restrictive means of addressing the harm. Such reservations may be best made in other legislation, such as that targeted at controlling animal disease or protecting animal welfare.

Queensland's view is that the reservation of practice restriction in the Queensland legislation is justified in the public interest. The restriction refers to the prescribed "acts of veterinary science that require specific veterinary education to perform", and these most notably include acts that require diagnosis, surgery and the use of scheduled drugs.

The view is that it is in the public interest and in the interests of animal welfare to restrict the practice of veterinary science to persons who have undertaken a comprehensive and structured course of tertiary training in the science and as a result have gained professional expertise in the science.

There is no restriction on non-registered veterinary surgeons providing veterinary treatments that are not prescribed as "acts of veterinary science" and which do not require specific veterinary education to perform.

In addition, a number of acts of animal husbandry and animal dentistry have been give exemptions as acts of veterinary science that allow non-veterinarians to perform them. The exemptions effectively allow the practices that are commonly performed by non-veterinarians throughout Australia. These procedures do not require the administration of scheduled drugs to ensure the welfare of the animals.

For reasons of public health and safety, use of restricted and controlled drugs is restricted to authorised persons under the respective Australian state and territory Health Acts. Registered veterinarians are authorised persons. To be registered as a veterinarian a degree in veterinary science from an accredited tertiary institution is required. To ensure the required standard of animal welfare is delivered, scheduled drugs are an essential component of the practice of veterinary science. The continued life, good health and absence of pain and suffering of animals is positively in the public interest.

Extensive public and industry consultation during the Queensland review revealed wide community support for maintaining a restriction on who may perform acts of veterinary science. Queensland accepts the protection of welfare of an animal as a prime responsibility of Government, and believes the restrictions on veterinary practice reflect community expectations.

Queensland's Departments of Health and Primary Industries, as the regulating authorities for scheduled drug regulation and animal welfare protection respectively, support the continuation of the current Queensland restrictions on practice. Resources of those agencies are not available to monitor the practice of veterinary science by non-registered persons.

Registration as a professional provider extends to most professions, and in particular to the medical, engineering and architecture professions so as to serve the public interest by maintaining standards and identifying qualified persons. This is a fundamental principle. Queensland submits that animals should be afforded similar protection and the Veterinary Surgeons, Health and Animal Welfare legislation combine to provide this protection.

Prior Approval of Premises -- community and industry consultation during the Queensland review supported the approval (not registration) of the Board for use of premises to

undertake veterinary practice on privately owned animals was warranted to protect the interests of the consumer and to promote animal welfare.

Arbitrary exclusion of new premises is not possible due to specific provisions of the legislation that provide criteria for decision, necessity for issue of information notice if an application is refused and the right of appeal to the independent Veterinary Tribunal.

Any person may apply and all applications are determined by demonstration of compliance with uniform minimum standards applied equally to all applications. The standards are freely available to any person on request and will be accessible on the proposed Board website.

Further details in relation to this review are provided in Attachment 2.

Forestry Act 1959

The NCC is seeking a report on the existing native forest sawlog allocation system, including full details of the restriction and the public interest evidence supporting its retention. The NCC queried whether CPA clause 5 was properly applied in this instance.

The Review of the *Forestry Act 1959* considered two issues:

- the native forest sawlog allocation system. The Act provides a specific authorisation exempting the non-competitive allocation and sale of native forest sawlogs from 51(1) of the *Trade Practices Act 1974*. Clause 2(1) of the *Conduct Code* obliges jurisdictions to advise the Australian Competition and Consumer Commission (ACCC) within 30 days of the legislation being enacted; and

- the compulsory levy on purchase of timber from Crown land to fund the Timber Research and Development Advisory Council (TRADAC).

The Review concluded that some non-competitive access to native forest sawlogs through the crown native sawlog allocation system, and the TRADAC stumpage payment provided a net benefit to the community. It therefore recommended that both the legislative authorisation for the allocation system and the TRADAC stumpage payment be retained in legislation. The Government accepted the Review's recommendations. Subsequently, the Government amended the Act in January 2000 to make the contributions to TRADAC voluntary.

Further details in relation to this review are provided in Attachment 2.

Sawmills Licensing Act 1936

The NCC is seeking confirmation that this Act has been repealed in accordance with previous advice.

The Government has approved the repeal of this Act and a Bill has been prepared to that effect. However, the Government has decided not to repeal this Act until the provisions of the proposed Queensland Forest Practices System (QFPS) relating to taking native timber from private land Act have been implemented. The Government continues to work with

key industry and environmental stakeholders, including the Queensland Timber Board and Australian Rainforest Conservation Society, to develop the QFPS.

Even though it remains in place, as it is presently administered, the Act is not an impediment to competition as there are no limits on the issue of mill licences (either in number or in individual capacity), nor are there any impediments to the transfer of licenses or the entry of new operators, and annual licence fees are minimal.

Before the Act could be applied in a manner that imposed actual restrictions on mill operators (for example, the imposition of limits on throughput of certain timber species), new Regulations would be required, which in turn would be dependent on a public benefit test being conducted in accord with NCP requirements.

1.3.3 Transport

Taxis and Hire Cars

The NCC does not accept that Queensland's 2000 review of legislation regulating the taxi and hire car industry made a robust case for retention of the current arrangements, particularly the key restriction on the number of taxi and hire car licences. The NCC regards Queensland as not having met its NCP obligations in this area. The NCC has indicated it will be reassessing this issue in 2003 based on compliance with a broad regulatory reform model that requires licence numbers to be increased gradually to address the imbalance between demand and supply, rather than the restriction on licence numbers being removed immediately.

Queensland's Sixth Annual Report (2002) reported that the Government had directed the Department of Transport to prepare specific policy proposals in response to the review report for its consideration after completing consultation on the review report. The main focus of the consultation and policy development were to be on measures to enable booking companies more flexibility and responsibility in controlling the resources they need to provide taxi services, while at the same time ensuring minimum standards are maintained. The Department of Transport is expected to provide a range of policy proposals to the Government for its consideration in April 2003.

Further details in relation to this review are provided in Attachment 2.

Transport Infrastructure Act 1994 / Transport Infrastructure (Rail) Regulation 1996

A short form public benefit test has been undertaken on rail safety related provisions in the *Transport Infrastructure Act 1994* and Regulation. The NCC is seeking a report on the implementation of the proposed amendments to the legislation arising from the review.

Amendments to the legislation to address the recommendations of the review, and issues raised by the NSW Inquiry into the Glenbrook rail accident and the QCA, are expected to be introduced to Parliament in May 2003.

Further details in relation to this review are provided in Attachment 2.

Harbour Towage

A review of the Transport Infrastructure (Ports) Regulation 1996 as it relates to harbour towage arrangements was completed in January 2002. The NCC is seeking a report on the Government's response to the recommendations of the review and on the implementation of reforms.

The Government accepted all the recommendations of the review. Legislative amendments to give effect to the recommendations were made in November 2002.

Further details in relation to this review are provided in Attachment 2.

State Transport (People Movers) Act 1989

The Government had been proposing to repeal this Act, but decided to re-examine the issue following further consultation with the existing operators covered by the Act. The NCC is seeking a report on the outcome of the Government's re-examination.

The public benefit test recommended retention of the Act in relation to regulation of the two existing licensees to preserve their legal rights. All new "people mover" proposals will be regulated under the *Integrated Planning Act 1997* framework. Legislation to support the recommendations is expected to be introduced into Parliament in early 2003.

Further details in relation to this review are provided in Attachment 2.

1.3.4 Health and Pharmaceutical Services

Health Practitioner Legislation

Core Practices

The NCC is seeking a report on the final policy approach adopted by Queensland following the review of core practice restrictions, including reform implementation and the public interest case for any remaining restrictions on competition.

A second-stage health practitioner review considered three areas of reservation of practice relating to thrust manipulation of the spine, prescription of optical appliances and surgery to the foot and ankle. The review recommended that the practices of thrust manipulation of the spine and prescription of optical appliances be reserved for specific health professions, but recommended that no reservations should apply for surgery to the foot and ankle. Authority to prepare and introduce new legislation arising from the review recommendations is expected to be sought in May 2003. The legislation is expected to be introduced in May 2003 and commence in the second half of 2003.

Further details in relation to this review are provided in Attachment 2.

Dentistry

A second-stage health practitioner review considered restrictions on the practice of dentistry including whether allied oral health practitioners should be registered and what

conditions on practice should apply to certain dental practitioner groups. The review recommended that certain restrictions be removed while others be retained.

Authority to prepare and introduce new legislation arising from the review recommendations is expected to be sought in May 2003. The legislation is expected to be introduced in May 2003 and commence in the second half of 2003.

Further details in relation to this review are provided in Attachment 2.

Nursing Act 1992

The NCC is seeking a report on the completion of the review and reform of the *Nursing Act 1992*, including the public interest case for any remaining restrictions on competition.

The review is considering a number of restrictions in the *Nursing Act 1992* related to the practice of nursing and midwifery. Authority to prepare new legislation arising from the review recommendations is expected to be sought from the Government before June 2003. The legislation is expected to be introduced and commenced by the end of 2003.

Further details in relation to this review are provided in Attachment 2.

Health Act 1937 (hairdressing and skin penetration)

The NCC is seeking a report on the progress of the review and reform of the health legislation relating to hair dressing and procedures involving skin penetration.

The Government has endorsed the recommendations to: replace the licensing of premises with the licensing of businesses undertaking higher risk procedures (e.g. tattooing); and discontinue the licensing of lower risk activities such as hairdressing. The Government authorised preparation of the Public Health (Infection Control for Personal Appearances) Bill was given in June 2000. A draft Bill was released for public consultation in late February 2003 The Bill is expected to be introduced in May 2003 and passed in the second half of 2003.

The new legislation is not expected to commence until 1 July 2004. The responsibility for the administration and enforcement of the new legislation will rest with local governments. The delayed commencement is to allow time for local governments to be fully informed about the details of the new legislation and to make the necessary administrative arrangements for its effective operation and enforcement.

Further details in relation to this review are provided in Attachment 2.

Pharmacy Act 1976

The NCC is seeking a report on progress in completing the review and reform of the ownership restrictions in the repealed *Pharmacy Act 1976* which were preserved by the *Pharmacists Registration Act 2001*, including the public interest case for any restrictions on ownership that will be retained.

QH plans to seek authority to prepare new legislation arising from the review recommendations before June 2003. The legislation is expected to be introduced and commenced by the end of 2003.

Further details in relation to this review are provided in Attachment 2.

Health Act 1937 (drugs and poisons and therapeutic goods)

The NCC is seeking a report on the reform response to the National Review of Drugs, Poisons and Controlled Substances Legislation (Galbally Review), including any transitional arrangements beyond the June 2003 assessment.

The Government's authority to prepare new legislation to adopt the Commonwealth *Therapeutic Goods Act 1989* by reference is expected to be sought before June 2003. The legislation is expected to be introduced and commenced by the end of 2003. Implementation of other reforms arising from the National Review will proceed after CoAG has given its response to the National review recommendations.

Further details in relation to this review are provided in Attachment 2.

1.3.5 Legal and Other Professions and Occupations

Security Providers Act 1993

The NCC is seeking a report on the progress with the review and reform of this Act, including the public interest case for any remaining restrictions. The Act regulates the operations of security providers, namely private investigators, crowd controllers and security officers and firms. Restrictions in the Act relating to licensing requirements and business conduct were reviewed and their retention found to be in the public interest. Therefore, no reform is required.

Further details in relation to this review are provided in Attachment 2.

Pawnbrokers Act 1984 and Second-hand Dealers and Collectors Act 1984

The NCC is seeking a report on the progress with the review and reform of these Acts, including the public interest case for any remaining restrictions. The Acts regulates the operations of pawnbrokers, second-hand dealers, collectors and 'entrepreneurs'.

The review, which was completed in June 2002, recommended the retention of licensing under a consolidated Act. Other recommendations include: repeal of provisions requiring collectors to be licensed; introduction of a single licence type; multi-site licences to replace the requirement for a business to have a licence for each separate site; reform of the fit and proper person test; and streamlining of business conduct restrictions. The Government has accepted the recommendations of the review. The decision to take the opportunity to simplify the legislation by consolidating the two Acts has delayed implementation, but it is expected the new legislation will be introduced into Parliament in June 2003.

Further details in relation to this review are provided in Attachment 2.

Auctioneers and Agents Act 1971 (maximum commissions)

Most of the recommendations of the review of this Act were implemented in 2000 when it was replaced with *Property Agents and Motor Dealers Act 2000* (PAMD Act). While recommending that fees and commissions (including buyer premiums) be deregulated, the review recommended transitional arrangements be put in place involving a community education and information campaign prior to deregulation. The NCC is seeking a report on plans for ending the transition arrangement.

A further Review of Commissions commenced in April 2002, assisted by a working party of key stakeholders, to consider various options in relation to the regulation of commissions under the PAMD Act. The Government is currently considering the regulatory options.

Legal Practitioners Legislation

In 2000, the Queensland Government announced a reform package covering the admission arrangements for legal practitioners, practicing certificates, complaints and disciplinary procedures, professional indemnity insurance, charging issues and fidelity fund arrangements. Implementation of the reform package was deferred to allow for an NCP review to be undertaken. The NCC is seeking a report on progress with review and reform implementation. It is also seeking information on the public interest case for the restrictions on advertising personal injury services introduced in 2002.

The NCP review has been completed and its recommendations are currently being considered by the Government. A number of the issues raised in the 2000 reform package and the NCP review are also under consideration by the Standing Committee of Attorneys-General (SCAG). The Government is expected to announce its response to the package and review in the first half of 2003 with a Bill ready for introduction mid-2003. It is expected that the Bill will incorporate the national model laws provisions to be settled by SCAG after consultation following its April 2003 meeting.

Further details in relation to this review are provided in Attachment 2.

1.3.6 Finance, Insurance and Superannuation Services

WorkCover Queensland Act 1996

The review of the *WorkCover Queensland Act 1996* examined nine provisions which potentially restricted competition and was completed in December 2000 by an Inter-departmental Committee comprising representatives from the Department of Industrial Relations, the Department of the Premier and Cabinet and Queensland Treasury. The Committee's report which included the findings of the PBT conducted by independent consultants was subsequently endorsed by the Government in May 2001.

In summary, the key recommendations of the report were that:

- the requirement for employers to maintain accident insurance coverage for their workers be retained;
- the public monopoly for the Queensland workers' compensation system be retained;

- Q-COMP become a completely separate entity from WorkCover to ensure independent regulation of the market;
- the current self-insurance licensing criteria be retained for a further three years at which time the full impact of self-insurance on the Queensland workers' compensation market can be better assessed; and
- the self-insurance criteria be reviewed in three years' time from 2001.

Implementation of the recommendations is well advanced, particularly the separation of WorkCover's regulatory and commercial insurance functions.

A Ministerial Consultative Committee, chaired by the Chairman of the WorkCover Queensland Board, was established to advise on a detailed model for the separation of WorkCover's regulatory and commercial insurance functions. This committee included representatives from employer associations, unions and government. In May 2002, the Committee recommended the development of new workers' compensation legislation and repeal of the *WorkCover Queensland Act 1996* and Regulations. The new legislation will establish a new stand-alone Q-COMP regulatory authority with an independent board of Directors.

It had been expected that the new legislation would be in place and operating by the end of 2002. This schedule was not achieved because of the size and complexity of the project and the associated consultation processes. However, the Government did authorise preparation of the necessary legislation in August 2002 and the legislation is scheduled for introduction to the Parliament in April 2003 to take effect from 1 July 2003.

Three recommendations of the review require Q-COMP to participate in reviews of certain issues, including self-insurers' occupational health and safety requirements, medical and allied health professional service conditions and rehabilitation requirements. To ensure independent outcomes, such reviews will not be undertaken until after the formal and practical separation of Q-COMP.

As part of the priority areas to be considered its 2003 assessment, the NCC is seeking further information on the NCP implications of public monopoly insurance arrangements. This information is provided in section 1.5.2.

Public Sector Superannuation

The *Superannuation (State Public Sector) Act 1990* establishes QSuper as the monopoly provider of superannuation services to Queensland public servants. The NCC is seeking information on the public interest arguments in support of monopoly provision.

The Government Superannuation Office (GSO) has re-examined the issue of monopoly provision in response to the NCC's request and recommended that the *Superannuation (State Public Sector) Act 1990* and associated legislation be retained in their current form.

The objective of the legislation is to ensure equitable access of Queensland public sector employees to a superannuation scheme that maximises benefits to members. Under current arrangements, QSuper is the sole provider of superannuation for certain Queensland public sector agencies and employees, and those parties have exclusive access to QSuper membership.

Upon review of the current arrangements and alternative methods of provision, it is apparent that the benefits provided to stakeholders far outweigh the costs of the current restrictions. The weight of benefits over costs are particularly prevalent for Queensland public sector employees, who are the primary stakeholders in this review. The restriction ensures that employees have access to superannuation arrangements that provide generous benefits under a low cost structure, with portability across the Queensland public sector. The attractiveness and portability of the current arrangements contribute to workforce stability within the public sector, and ultimately the Government's ability to provide services to Queensland.

The effect of the current restriction on competition and on the economy generally is considered to be negligible. The key business functions of administration and investment are not prescriptive arrangements, and are subject to review by the QSuper Trustees. Alternatives to the current arrangements have been considered, and analysis of those options has revealed that the costs outweigh any benefits.

The review demonstrated that the current arrangements provide a net benefit to the community as a whole. Further, a review of alternative methods of provision has determined that the objective of the legislation is best achieved by retaining the current restriction.

Further details in relation to this review are provided in Attachment 3.

1.3.7 Retail Trading Arrangements

Trading Hours

From 1 August 2002, seven day trading applies in South East Queensland (including the Sunshine Coast, Gold Coast and Brisbane and surrounding areas), as well as the Cairns Tourist area, Douglas Shire Tourist Area, Townsville CBD and Whitsunday Tourist Area. The NCC is seeking a report on reform implementation and the public interest case for any remaining restrictions.

As reported in 2002, the Queensland's trading hours legislation, the *Trading (Allowable Hours) Act 1990*, was not reviewed under NCP. Instead the Queensland Government relies on the powers that the Act confers on the Queensland Industrial Relations Commission (QIRC) to make determinations on applications to vary trading hours. In addition, the Queensland Government has made a number of submissions to the QIRC drawing its attention to the need to take account of NCP public interest criteria in making its deliberations. The NCC has previously indicated the QIRC process is sufficiently public, independent and transparent.

Queensland's 2002 report also foreshadowed legislative changes to: amend the objects of the Act to clarify that the QIRC's role is one of deciding trading hours rather than restricting hours; and specifically require the QIRC to take account of employment issues and the views of local governments. These changes came into effect in August 2002.

Any further extensions to the trading hours will be considered on their merits by the QIRC as an independent body on an application-by-application basis. Hearings opened in February 2003 on an application to allow Sunday trading in the Hervey Bay-Capricorn

Coast areas – a decision is expected in March or April 2003. The Retailers Association of Queensland has indicated that it will be making further applications as appropriate.

Queensland considers that it has met its CPA obligations in relation to trading hours by putting in place a public, independent and transparent process based on the deliberations of the QIRC to assess the merits of applications to extend trading hours.

Liquor (Detached Bottle Shops)

As outlined in its 2002 assessment, the NCC considers that significant anticompetitive effects arise from Queensland's decisions to retain the requirement that only hotel licence holders can operate bottle shops and the associated restrictions (particularly the regulation of bottle shop location and numbers and the requirement to establish a bar facility at the site of the hotel), in that:

- the hotel licence requirement prevents entry by non-hotel packaged liquor sellers such as specialist packaged liquor bottle barns and retailers who may wish to sell packaged liquor in conjunction with sales of pre-prepared food for home consumption;

- the restrictions have the effect of increasing the demand for hotels relative to the supply, and appears to be creating a market in hotels/licences similar to that which has developed for taxi plates.

- the decision to allow sales by licensed clubs and restaurants appears to be a marginal change at best;

- because of the wide range of alcohol sold in bottle shops in jurisdictions other than Queensland, the movements in full strength beer prices alone may not be a sufficient indicator of the competitiveness of the whole market;

- other jurisdictions seek to ensure the responsible selling of alcohol by specifying the qualifications required of licensees (rather than a hotels only restriction), there is no evidence that non-hotel sellers of packaged liquor are any less responsible than hotel sellers and there is little evidence that misuse of alcohol is a more significant problem than in Queensland;

- imposing a State wide requirement that sellers of packaged liquor hold a general licence appears unnecessarily restrictive (particularly in urban areas) if the objective is to support rural communities by safeguarding the profitability of rural hotels; and

- Queensland's hotel licence requirement directs around $500 million annually of packaged liquor sales to Queensland hotels which may otherwise have gone to non-hotel outlets (based on NSW evidence cited in Queensland's review).

The NCC is seeking a report on the outcomes of any reconsideration of the takeaway liquor sales arrangements and the public interest case for remaining restrictions.

The Queensland Government has decided to retain the current ownership and operation arrangements for detached bottle shops as an appropriate method of meeting the dual objectives of harm minimisation and protecting the viability of rural hotels and

communities, without imposing undue restraints on competition. It has done so on the basis that:

- restrictions have not constrained growth unnecessarily in either the number or diversity of hotels and bottle shops in response to demand; and

- the only reliable comparison of takeaway prices (full strength beer) is evidence of strong price competition.

In response to the specific issues raised by the NCC:

- the size restriction may have had a slight effect on the style of detached bottle shops provided (eg liquor barns), but generally the style reflects planning requirements as well as the market and location each shop is designed to serve. Although businesses selling pre-prepared food for home consumption are not allowed to sell take-away liquor, the growth in bottle shop numbers is such that most outlets of this nature in urban areas have bottle shops located nearby, often in the same local shopping centre;

- while the restrictions may have had some impact on hotel prices, the analogy with taxi licences is not valid. Unlike some other jurisdictions, in Queensland there is no control on the number and location of hotels -- other than valid public interest and planning considerations in relation to individual sites. The State-wide cap on the number of hotels was removed in the early 1990s and the staged removal of licence premiums was completed on 1 July 2002. Existing hotel licensees and those purchasing existing hotels do not enjoy any advantages in terms of bottle shop licences over licensees of new hotels. The decision on whether to buy an existing hotel or build a new one is a business decision similar to that facing anyone seeking to enter most industries;

- in its previous reports, Queensland has used full strength takeaway beer for comparison for three reasons. It makes up a sufficiently large proportion of the takeaway liquor market to be representative, it is the only product which is consistent enough across jurisdictions to make comparisons valid and the Australian Bureau of Statistics (ABS) publishes actual price data rather than indices.

  As previously stated, valid comparisons of low and mid-strength takeaway beer prices are not possible because of significantly different low alcohol subsidies in different jurisdictions. In support of its contention that the price of full strength beer is not a sufficient indicator of competitiveness, the NCC quotes ABS data as indicating that wine prices were 7 per cent higher in Brisbane than in Melbourne in March 2002. As the NCC has not provided a reference for this data, it has not been possible to check this figure, or to make comparisons with other capital cities. ABS has advised that the only information it publishes on wine prices for capital cities relates to CPI-related indices. It would be very difficult to define "wine" in such a way that would allow for meaningful comparisons across different locations. Also, any comparisons using such indices would be invalid and could be misleading as they do not reflect the differing prices in the base year.

- it is not just rural communities that depend on the viability of their hotels, many communities on the outskirts of urban centres which also rely on local hotels for much of their social interaction could also be adversely affected; and

- the NSW evidence of increasing penetration into the takeaway liquor market by non-hotel outlets at the expense of hotel outlets is of limited relevance as it refers to the type of establishment from which liquor is purchased, not who owns and operates the outlet(s). Although figures are no longer available on individual outlet sales, it is obvious the trend towards increased purchases of takeaway liquor from non-hotel type outlets applies to Queensland as well and is not constrained by any lack of access to appropriately located outlets.

Environment Protection Regulation 1998 (fuel standards)

The *Environmental Protection Regulation 1998* sets limits in motor vehicle fuel for benzene, sulphur, lead, Reid vapour pressure, MTBE, ETBE and TAME.[2] The NCC is seeking comment on the extent to which the establishment of fuel standards restricts competition for local refineries and the public benefit case for any restrictions identified.

The Queensland Government does not consider that the fuel standards established under the Regulation are restrictions on competition. The Regulations were negotiated at length with the four major oil companies and an independent importer then active in Queensland. Following those negotiations, all of the companies agreed to the final form of the requirements. They advised that they expected to have no problems in meeting the requirements for the products they distributed in Queensland, and that they did not expect the regulations to result in a discernable rise in the price of fuel at service stations. These expectations have proven to be correct.

At the time it was introduced, the regulation was substantially similar to regulations already in place in Western Australia, and under development nationally. In most cases, national fuel quality standards have now caught up with (or overtaken) this regulation, or will catch up with (or overtake) it in the next few years as detailed below:

Benzene .....there is currently no national standard for Benzene content. A more stringent national standard will take effect from 1 January 2006;

Sulphur.....the national standard for Sulphur content is now equivalent to that in the Regulation;

Lead .....the national standard for Lead content is now more stringent than in the Regulation;

MTBE.....there is currently no national standard for MTBE content. An equivalent national standard will take effect from 1 January 2004; and

ETBE & TAME.....the national standard is now more stringent than in the Regulation.

The public benefits from reducing the benzene, sulphur and lead contents of fuel and lowering Reid vapour pressure are reduced ambient concentrations of pollutants in urban areas adversely affected by motor vehicle emissions, particularly South East Queensland. This results in reduced morbidity and mortality in the general population, with improved quality of life, greater productivity, and reduced health care costs. Specifically:

- Benzene is a known human carcinogen, with increased risk of lung cancer being clearly associated with exposure to benzene;

[2] Reid vapour pressure (Petrol's volatility at 37.8ºC); Ethyl tertiary-butyl ether (ETBE);.Methyl tertiary-butyl ether (MTBE); and Tertiary-amyl methyl ether (TAME).

- Sulphur in fuel contributes directly to particulate formation. Epidemiological studies have linked exposure to elevated atmospheric levels of particulates with increased mortality rates from cardiovascular and pulmonary diseases, and aggravation of lung complaints such as bronchitis and emphysema. Reducing the sulphur content of diesel will reduce the emission of particulates from the entire diesel fleet. The availability of low sulphur diesel as a commercial fuel will also allow new technology diesel engines to operate at their optimum emissions performance, thereby also lowering emissions of carbon monoxide, oxides of nitrogen and hydrocarbons;
- Lead is a neurotoxin, and can cause impaired intellectual development in children, particularly the very young; and
- lowering Reid vapour pressure limits the evaporation of volatile organic compounds, which have a major role in controlling the rate of formation of photochemical smog. Smog is associated with aggravation of lung conditions such as bronchitis, emphysema and asthma, and irritation of eyes, nose, mouth and throat, as well as damage to vegetation and buildings.

The public benefits from lowering the MTBE, ETBE and TAME contents flow from the reduced risk of contamination of surface waters and groundwater. Compared to other components of gasoline, these ethers dissolve readily in water, have a very strong taste (even at parts per billion concentrations in water) and break down slowly. Unlike most other components of petrol, international experience has shown that they are capable of rendering bodies of water unfit for human consumption despite fuel storage industry best practice with regard to equipment, maintenance, and leak prevention and detection programs.

1.3.8 Fair Trading and Consumer Protection

Fair Trading Act 1989

The NCC is seeking a report on progress with review and reform of this Act, including the public interest case in support of any retained restrictions on competition. The Act regulates mock auctions, door-to-door selling and provides for information and safety standards. A targeted public review was completed in August 2002. The Government accepted the recommendations of the review with the required minor amendments being implemented by the *Fair Trading and Another Act Amendment Act 2002*.

Further details in relation to this review are provided in Attachment 2.

Funeral Benefit Business Act 1982

The NCC is seeking a report on progress with review and reform of this Act, including the public interest case in support of any retained restrictions on competition. The Act regulates the operation of funeral benefit businesses. A targeted public review was completed in October 2000. The Government has accepted the recommendations of the review and a Bill to amend the Act accordingly is expected to be introduced into Parliament in June 2003.

Further details in relation to this review are provided in Attachment 2.

Credit (Rural Finance) Act 1996

The NCC is seeking a report on progress with review and reform of this Act, including the public interest case in support of any retained restrictions on competition. A minor review was undertaken which reported in February 2002. The review concluded that minor restrictions relating to default notices were justified in the public interest and should be retained.

While the review of the *Credit (Rural Finance) Act 1996* recommended no changes, the review of the *Hire Purchase Act 1959* did recommend minor amendments which were incorporated into the legislation to repeal the Hire Purchase Act.

Further details in relation to this review are provided in Attachment 2.

Profiteering Prevention Act 1948

Queensland has previously advised that this Act was to be repealed. The NCC is seeking confirmation that the Act has been repealed. The Act was repealed without review by the *Tourism, Racing and Fair Trading (National Competition Policy) Amendment Act 2002* which received assent in September 2002. The last Order under the Act was issued in 1967.

Credit Act 1967

Queensland has previously advised that this Act was to be repealed. The NCC is seeking confirmation that the Act has been repealed. This Act, which regulated the provision of personal loans up to $40,000, was effectively replaced by the national Consumer Credit Code from 1 November 1996. The Government intends to repeal the Act but must wait for existing litigation in a small number of cases to be finalised before it can do so.

Hire Purchase Act 1959

Queensland has previously advised that this Act was to be repealed. The NCC is seeking confirmation that the Act has been repealed. Legislative amendments to limit the *Hire Purchase Act* to existing contracts and insert a sunset clause became effective in January 2003. At the same time, amendments were put in place to transfer the effect of certain provisions related to farmers to the *Credit (Rural Finance) Act 1996*.

Further details in relation to this review are provided in Attachment 2.

1.3.9 Education, Child Care and Gambling

Racing and Betting Act 1980

The NCC is seeking a report on progress with the implementation of reform, including the public interest case for any remaining restrictions on competition. The Act and associated Regulations and Racing Rules regulate the operations of bookmakers and the Queensland racing industry.

The interdepartmental review of this legislation was undertaken in two stages. The first, which reported in December 2000, made recommendations in relation to the existing Act. The second, which reported in September 2002, considered potential restrictions in the Racing Bill 2000 which provided a proposed new regulatory regime to replace the existing Act. This included restrictions which were either not addressed in the 2000 review or inconsistent with the recommendations of the 2000 review.

The Government accepted the recommendations of the 2002 review. The new legislation, which was passed in Parliament in October 2002, is expected to come into operation from 1 July 2003.

Further details in relation to this review are provided in Attachment 2.

Gambling Legislation

As reported previously, Queensland decided to undertake a single *review of all its gambling legislation (with the exception of the Racing* and Betting Act 1980 and the Casino Agreement Acts). The NCC is seeking a report on the progress of review activity and reform implementation, including the public interest case supporting any retained restrictions on competition.

The draft review report was released for public consultation in April 2003. The draft report recommends the retention of the identified restrictions on competition, except for the current market share restriction placed on Licence Monitoring Operators, which is recommended to be removed.

It is expected that the review will be completed and the Government response finalised in June/July 2003.

Further details in relation to this review are provided in Attachment 2.

Education (General Provisions) Act 1989

The review of the *Education (General Provisions) Act 1989* has been finalised and the reforms were implemented on 13 December 2002. The review addressed the issues of the registration of overseas curriculum and the ability to prohibit the sale of certain items from State school tuckshops.

Further details in relation to this review are provided in Attachment 2.

Grammar Schools Act 1975

The NCC is seeking a report on the completion of review activity and reform implementation for the Grammar Schools legislation, including the public interest case supporting any retained restrictions on competition.

An original review of the *Grammar Schools Act 1975* was completed in September 1997. A further review was undertaken and completed in June 2002. It recommended that the minimum financial requirement governing the establishment of a Grammar School be removed.

A wider review of the Act, to consider the impact of new processes in other legislation for the accreditation of non-State schools and the financial administration of Grammar schools, was also carried out and completed in March 2003.

In March 2003, the Government authorised the preparation of a Bill to implement the recommendations of both the NCP and wider review. The Bill is expected to be introduced to Parliament in May 2003 and passed in September 2003.

Further details in relation to this review are provided in Attachment 2.

Child Care Act 1991

The NCC is seeking a report on the completion of review activity and reform implementation for the child care legislation, including the public interest case supporting any retained restrictions on competition.

The review of the *Child Care Act 1991* and associated Regulations was completed in May 2002 and endorsed by the Government in June 2002. The Child Care Bill 2002 was passed by Parliament in October 2002 and assented to on 1 November 2002 as the *Child Care Act 2002*. The Child Care Regulation 2003 is being finalised and it is anticipated that both the Act and Regulation will commence operation on 1 September 2003.

Further details in relation to this review are provided in Attachment 2.

1.3.10 Planning, Construction and Development Services

Building Act 1975

The NCC is seeking a report on the completion of review activity and reform implementation for the building legislation, including the public interest case supporting any remaining restrictions on competition.

The review of the *Building Act 1975*, which dealt with provisions related to the regulation of building certifiers, was completed in June 2002. The Government accepted all but one of the review's recommendations (the exception related to the ability of local governments to recover auditing costs where a private certifier approves development). The review's recommendations were implemented in the *Plumbing and Drainage Act 2002*.

Further details in relation to this review are provided in Attachment 2.

Architects Act 1985

A national review of legislation regulating architectural profession was conducted by the Productivity Commission. The Working Group of States and Territories rejected the Productivity Commission's preferred approach as not being in the best public interest but considered that the alternative approach provided the appropriate direction. The NCC is seeking confirmation that the *Architects Act 1985* has been amended in accordance with the Working Group of State and Territories' recommendations.

The recommendations of the Working Group were implemented by the *Architects Act 2002* which commenced on 1 January 2003.

Further details in relation to this review are provided in Attachment 2.

Surveyors Act 1977

Queensland had previously reported that amending legislation to implement the outcome of the review was to be introduced in 2002. The NCC is seeking a report on implementation progress. A Draft Bill was released for comment in September 2002. Results of consultation are being analysed and amending legislation is expected to be introduced in June 2003.

Further details in relation to this review are provided in Attachment 2.

Valuers Registration Act 1982

Queensland had previously reported that amending legislation to implement the outcome of the review was to be introduced in 2002. The NCC is seeking a report on implementation progress.

In line with previous advice, proclamation and implementation of changes to the Act and Regulation were all completed by 1 May 2002. The amending legislation provided for:

- broadening the membership of the Valuers Registration Board to include two business and community representatives in addition to three registered valuers;
- in addition to the requirements for first time registration (suitable academic or demonstrated adequate experience for registration as a valuer or demonstrated experience for listing as a specialist retail valuer), the introduction of competency-based renewal for registration of valuers and renewal of listing as specialist retail valuers; and
- removing the anti-competitive restriction on trading that the Board may have placed on a specialist retail valuer.

Further details in relation to this review are provided in Attachment 2.

Queensland Building Services Authority Act 1991

The NCC is seeking a report on the Government's response to the review and the implementation of reforms.

The Government is currently considering the review's recommendations.

Further details in relation to this review are provided in Attachment 2.

Electricity Act 1994

The non-safety and safety aspects of *Electricity Act 1994* and associated Regulations were reviewed separately. The NCC is seeking a report on progress in implementing the recommendations of the reviews.

Non-Safety Aspects

The Electricity Act 1994 and associated Regulations contains extensive provisions relating to the conduct of the electricity industry (other than electrical safety matters which are now dealt with in the *Electrical Safety Act 2002*) including the issuing of authorities for generation, transmission, distribution and retail entities; powers about electricity pricing; service quality and other customer protection requirements; and restrictions on the trading activities of generation, transmission, distribution and retail entities.

Amendments to the legislation were made in 1997 to give effect to the Council of Australian Governments (CoAG) reforms associated with the establishment of the National Electricity Market (three tranches of significant amendments to the Act were passed and changes made to Regulation). However, some provisions remaining in the legislation were identified as potentially restricting competition.

An NCP review of the legislation, including these provisions, has now been completed. As part of this review, independent consultants conducted a Public Benefit Test and concluded the legislation is fundamentally pro-competitive, but there were some specific provisions that involved restriction on competition. The consultants made nine recommendations in relation to the identified restrictions.

The Government has accepted all nine recommendations, with legislative amendments to be implemented in regard to six of the recommendations, departmental reviews for a further two recommendations and ongoing implementation of existing processes in regard to the remaining recommendation. Attachment 2 provides further details regarding the action taken by the Queensland Government in response to the review.

It is expected that the legislative amendments to give effect to the Queensland Government's response will be made by June 2003.

Safety Aspects

The Review of the safety aspects of the *Electricity Act 1994* was carried out in two parts:

- a public benefit test (PBT) was undertaken by independent consultants of the safety-related licensing provisions in the legislation, including, issuing of licences, qualifications, regulation of persons who require a licence, licence classes and type of work, and disciplinary action; and
- an intradepartmental committee considered the non-licensing safety provisions including safety and technical standard requirements, electrical installations, cathodic protections systems and approval of electrical articles.

The Review, endorsed by the Government in February 2002, recommended:

- occupational and business licensing for electrical work continue in the public interest;
- the definition of electrical work be amended to allow greater competition in relation to less dangerous extra-low voltage work;
- the legislation's objectives be broadened to include consumer protection provisions based on minimum financial and insurance requirements for contractors;

- administrative arrangements for the licensing system be addressed in consideration of institutional options such as the creation of a new independent electricity safety regulator;
- continuation of disciplinary provisions, although the report noted concerns about how effective the existing disciplinary provisions were in practice in terms of supporting compliance;
- provisions requiring compliance with relevant safety and technical standards continue in the public interest; and
- further consultation be conducted on the extent of adoption of performance-based legislation for provisions relating to safety and technical requirements for electric lines or works, and the safeguarding of persons working on electric lines and electrical installations.

The *Electrical Safety Act and Regulation 2002 (ESA 2002)*, which commenced 1 October 2002, addresses the above recommendations.

However, three recommendations relating to licensing provisions were referred to an Industry Working Group (IWG) for consideration in terms of implementation. Their response is outlined in Table 1.1.

Table 1.1: IWG Responses to PBT Recommendations

PBT Recommendation	IWG Response
Consideration should be given to rationalisation of existing electrical worker licence classes to more closely align with national approaches	The IWG recommended retaining the status quo for existing electrical worker licences based on health and safety reasons and the net benefit to the community
Some adjustments should be made to the qualification requirements with a view to a more competency-based approach	The IWG acknowledged the existence of alternate and competency based pathways for licence qualifications (which were not acknowledged in the PBT). The competency based pathways continue under the *Electrical Safety Regulation 2002*
Ownership restrictions on electrical contracting businesses could be reduced and made more consistent across business forms	The IWG supported the recommendation. Amendments to the *Electrical Safety Regulation 2002* are being progressed to remove restrictions on eligibility for an electrical contractor's licence.

The *Electrical Safety Regulation 2002* requires all persons who conduct a business or undertake electrical work to have an electrical contractor's business licence and in doing so meet certain business and financial requirements. Previously an electrical contractor's business licence was only required for electrical installation work.

Potential competition restrictions were examined in the Regulatory Impact Statement – *Proposed Electrical Safety Regulations under the Electricity Act 1994*. The RIS noted inconsistencies in the previous electrical contractor licensing regime, i.e. consumers were

protected when they engaged an electrician for installation work (such as installing a ceiling fan) but not for electrical repair work (such as repairs to whitegoods).

In examining the competition impact, the RIS reconsidered the key community benefits for electrical contractors' licences discussed in the PBT Report. Specifically that licensing:

- reduces transaction costs for consumers;
- corrects information asymmetry and information problems;
- protects third parties; and
- enforces obligations to perform, particularly as the licensing regime includes disciplinary processes.

It was concluded that the same arguments applied to contractors performing electrical repair work. Safety benefits to industry and consumers of contractor licence reform were deemed to outweigh costs, such as efficiency and compliance, and restrictions to competition.

Regulatory amendments made on 28 February 2003 make it easier for businesses applying for an electrical contractor licence by:

- reducing ownership restrictions by making eligibility requirements consistent for sole traders, partnerships and corporations; and
- broadening the options for a business seeking to meet the business skills requirement. A business may now split the technical and business requirements between two people, for example, a qualified technical person and a qualified business person.

Further details in relation to this review are provided in Attachment 2.

Sewerage and Water Supply Act 1949

The NCC is seeking a report on the review's recommendations, reform implementation and the public interest case supporting any remaining restrictions on competition.

The review of the Water Supply and Sewerage Act 1949 was completed in June 2002. The review made recommendations about: minimum product standards; licensing of plumbers and drainers; and local government inspectors. The Government accepted the review's recommendations which were implemented under the new *Plumbing and Drainage Act 2002*.

Further details in relation to this review are provided in Attachment 2.

1.4 New Legislation

Clause 5(5) of the CPA requires all proposals for new primary and subordinate legislation that restricts competition to be accompanied by evidence that the legislation is consistent with the clause 5 guiding principle. Under the Queensland Government's "gatekeeping" arrangements, all new (including amending) legislation that restricts competition must be subjected to a public benefit test prior to its consideration by Cabinet. The type and scope of each review is determined in accordance with the Queensland Government's *Public Benefit Test Guidelines* issued by Queensland Treasury, which also monitors compliance.

In addition to the NCP gatekeeping requirements for all new primary and subordinate legislation, under the *Statutory Instruments Act 1992*, any proposed subordinate legislation which is likely to impose appreciable costs on the community or a part of the community must have a Regulatory Impact Statement (RIS) prepared before the legislation is made. The Act includes guidelines on what must be included in the RIS. The section of the Act relating to the conduct of RIS is administered by the Business Regulation Review Unit (BRRU) within the Department of State Development, which also provides more detailed guidelines and advice on the conduct of RIS.

In its 2003 Assessment Framework (November 2002), the NCC considers the CPA clause 5(5) obligation to mean that governments should have in place legislation gatekeeping arrangements which maximise the opportunity for regulatory quality. The NCC has stated it will consider the effectiveness of these arrangements in its 2003 assessment and that effective gatekeeping arrangements would meet the following principles:

i. all legislation that contains non-trivial restrictions on competition should be subject to formal regulatory impact assessment to determine the most effective and efficient approach to achieving the government's regulatory objective, including alternatives to regulation. The impact analysis must explicitly consider competition impacts;

ii. there are guidelines for the conduct of regulation impact analysis that must be followed by all government departments, agencies, statutory authorities and boards that review or make regulations that restrict competition;

iii. there is an independent body with relevant expertise that advises agencies on when and how to conduct regulatory impact assessment. The body is empowered to examine regulatory impact assessments and to advise the Cabinet on whether they provide an adequate level of analysis.

iv. the regulatory impact assessment body monitors and reports annually on compliance with the regulation impact analysis guidelines.

The NCC has stated that if it cannot be confident that a government has established processes that are ensuring rigorous analysis of new legislation that restricts competition against CPA clause 5 principles, it will assess compliance by examining whether new legislation in the identified priority areas meets the CPA clause 5 guiding principle.

Queensland meets it obligations under principle (i) above through the Cabinet requirement for public interest justification of competition restrictions and/or the requirement for an RIS for relevant subordinate legislation. Detailed guidelines are in place which meet the requirements of principle (ii).

Queensland has established processes for ensuring rigorous analysis of new legislation that restricts competition and does not support there is a need to establish a separate regulatory impact assessment body as proposed under principles (iii) and (iv) above to demonstrate compliance with CPA clause 5. Queensland Treasury and BRRU provide specific advice on regulatory matters to Cabinet through established Cabinet processes. The requirement for a separate independent body is beyond the scope of the CPA and should not form part of the 2003 assessment criteria.

In 2002, 69 Acts and 271 Regulations (excluding Proclamations and significant appointments) were enacted. As part of Queensland's gatekeeping requirements, all draft

legislative proposals are examined to ensure that any potential restrictions on competition are identified.

If a potential restriction, which imposed an appreciable impact on the community, was identified, a public benefit test and/or a regulatory impact assessment was carried out on the restriction. Restrictions were only retained if it was held that they were necessary to achieve the objects of the legislation and were in the public interest. Attachment 4 lists all legislation passed during 2002 and, where applicable, describes the potential impacts on competition. Table 1.2 summarises the number of new Acts and subordinate legislation which were examined as part of the gatekeeping process during 2002.

Table 1.2: New legislation gatekeeping

Status	Acts	Subordinate Legislation
Legislation assessed as administrative only; or no restrictions identified; or restriction identified but has no appreciable impact on competition.	54	249
Restriction(s) identified but RIS* or PBT** not undertaken – restriction assessed to be justified to meet health or social objectives.	3	3
RIS or PBT undertaken	12	19
Total	69	271

*RIS - Regulatory Impact Statement; ** PBT - Public Benefit Test

1.5 Insurance Arrangements

1.5.1 Background

Over the past year, there have been significant difficulties for many sections of the community in obtaining affordable insurance coverage. The unavailability of insurance and instability of the private insurance market has been attributed to a variety of factors such as the collapse of HIH Insurance, FAI and the United Medical Protection (a Medical Defence organisation), increased claim costs, low insurance returns and new Australian Prudential Regulatory Association regulations.

Commonwealth, State and Territory Governments have been working together to develop strategies, such as reforms to the law of negligence, to improve the availability of affordable insurance. The Government is reluctant to make significant changes to existing mandatory insurance arrangements given the uncertainty and instability of the private insurance market.

In the meantime, the NCC has requested information on the Queensland Government's insurance arrangements for its 2002 assessment, particularly in relation to:

- workers compensation insurance and compulsory third party (CTP) motor vehicle insurance;

- legal professional indemnity insurance, including the outcome of the NCP review of Queensland's legal practitioners legislation; and
- the impact of recent law reforms on the insurance markets for CTP, workers compensation and legal professional indemnity insurance.

1.5.2 Workers Compensation

The NCC is seeking comment on the following issues raised in the 2002 assessment in respect to the provision of workers' compensation insurance:

- economies of scale;
- economies of scope and outsourcing;
- systems improvements, safety and rehabilitation and high risk customers;
- 'long tail' liabilities; and
- prudential supervision.

Each of these issues is discussed in the context of response to the specific information requested.

Economies of scale *- The Council specifically seeks comment and supporting data on the implications for economies of scale that may result from the existence of several competing insurers in state markets and the enterprise size that enables economies of scale.*

Apart from self-insurers, Queensland does not have competing insurers in the workers compensation market from which to draw comparative data. Nevertheless, it is clear that the greater the market share and therefore the size of the insurer, the greater the opportunity for minimising administrative costs and maintaining affordable and cost effective premiums.

As reported last year, the committee responsible for the review of Queensland's workers compensation legislation concluded that a larger pool contributed greatly to improved information and risk reflective premium setting as well as spreading risk more effectively, which is consistent with the nature of insurance.

The claims performance profile of the employers underwritten is highly significant. Competing insurers with limited workers compensation portfolio holdings within a jurisdiction may in fact be inclined to select for good claims performance in order to gain or maintain competitive advantage, thus leaving poorer performing employers exposed to increased difficulty and cost in obtaining mandatory insurance cover from insurers of last resort.

Queensland's continuing capacity to maintain the lowest average premium in Australia and full solvency with high benefit levels and access to common law damages provides support for the claimed importance of market share in workers' compensation underwriting.

Economies of scope and outsourcing *- Comment is sought on whether economies of scope available to private insurers offering insurance products across a range of risks provides an ultimate lower cost product to the workers' compensation consumer than that available via dedicated workers compensation insurers.*

The contention is problematic for the following reasons:

- Firstly, the proposition conflicts with Experience Based Rating and risk reflective premium principles and may undermine safety and claims management initiatives by sending inappropriate price signals; and

- Secondly, unfettered exposure to the fortunes of providers across the full range of insurances underwritten may in fact see workers' compensation premiums increasing to offset losses in other markets e.g. losses in fire and civil liability (non-comp) portfolios visited on workers' compensation clients.

With respect to the question of benefits from outsourcing selected functions to private providers, the Interdepartmental Committee (IDC) identified the outsourcing of claims management as an issue for examination and review in a further 3 years following the Review. Areas identified by the IDC as possible difficulties for the implementation of a satisfactory outsourcing model were the introduction of costs to accommodate a profit margin for managers and possible lack of take-up by providers if Service Level Agreements were to require cost reduction in the external provision as a criterion.

The reasons cited for the three year deferral were:

> "*to allow the effect of recent changes to the primary legislation, and proposed changes to access, management and costs relating to common law to be fully absorbed into the scheme and their impact on the market fully gauged*".

Legislative amendments implementing these changes were introduced in September 2001 and the review will be undertaken in early 2004 in line with the IDC recommendation.

Systems improvements, safety and rehabilitation and high risk customers *- The NCC seeks evidence of private insurers withholding workers' compensation insurance cover from high risk insurers or undertakings. Further, views on possible alternative approaches to litigation and fraud reduction, safety, rehabilitation and high risk employers are also sought.*

As previously stated, Queensland does not have competing insurers in the workers' compensation market and therefore there is no local evidence available of such practices. Selective underwriting practices and insurers' premium discounting aimed at increasing market share resulting in non-risk reflective premiums are however reported in other jurisdictions. Such practices would seem to be driven as an outcome of the need to maintain profits and in some cases, investor confidence, particularly in the wake of the HIH collapse.

Litigation and fraud reduction – improvements in the use of both insurer-held and cross-agency data have provided a significantly improved capacity for WorkCover to target potential premium evasion and avoidance. Developments in data mining and matching techniques and computer software applications and the selective use of amnesties, advertising, and cooperation with other agencies form the basis of on-going strategic compliance activity.

The use of litigation as a fraud control measure is considered to have value in limited circumstances, and is most effective when the outcome is of strategic significance to the integrity of elements of scheme design or is to a wide stakeholder group. There is however a need for insurers to be innovative and vigilant in the identification and application of fraud minimisation strategies.

Safety Rehabilitation and High Risk Customers - While primary workplace safety is addressed by specific OHS legislation and enforcement arrangements across all jurisdictions, the capacity of workers' compensation initiatives to influence employer safety behaviour is also of major significance.

Experience Based Rating (EBR) principles, which use the individual employer's claims experience for periods of up to 5 years as a predictor of future exposure and therefore determine a premium rate at the individual enterprise level, were introduced in Queensland in 1997. As well as focusing employers on the need to control workers' compensation as a cost to business, EBR has proven effective in improving awareness of the consequences of poor OHS practices. This risk reflective rating approach can be enhanced by cooperative strategies between OHS and workers compensation agencies targeting poor performing employers with risk management and OHS information strategies and prevention and compliance initiatives.

The use of premium incentive schemes trialled in some jurisdictions has not yet proven to result in long term or durable improvements in primary workplace safety and in most cases represent cross subsidy of poor performers by other employers beyond insurance pooling principles.

It is generally agreed that the provision of effective rehabilitation is fundamental to workers' compensation from both moral and cost minimisation perspectives. To be effective, however, case specific rehabilitation should be provided as soon as practicable after injury. In practice however, insurers do not in the main accept rehabilitation costs prior to admission of liability and acceptance of the claim. This often leads to lengthy delays in provision of the necessary treatment and ultimately leads to extended durations and increased costs in many cases. While rejection rates vary across state schemes, over 95% of claims are accepted across the board, therefore the opportunity to improve outcomes is lost for the majority for the sake of the 5% which may not ultimately be accepted.

An alternative approach for insurers is to allow limited rehabilitation costs (say $500) to be met prior to a decision on the claim, with these costs being spread across the pool. The improved durations resulting would reduce costs and are likely to be more durable. Such a scheme is being piloted in Queensland by WorkCover and the results will be evaluated before consideration of scheme-wide rollout.

'Long tail' liabilities *- The Council is seeking any information that indicates whether competing insurers generally are less motivated than monopoly providers to make careful actuarial assessments of the likelihood of serious accidents with long tail impacts.*

Again, Queensland has no local experience of competing insurers on which to base comment, however this issue applies in respect of self-insured employers. The potential for under provisioning for long-term claims by such employers is significant as in the majority of cases, insurance practice is not core to their business functions.

Traditional business practice is to minimise insurance costs through negotiation of terms and conditions to reduce premiums. The self-insurance or underwriting function is however to identify provision for future possible contingency costs and can mean significant commitment of otherwise available capital. This may lead to a temptation to seek a downward revision of provisioning estimates in order to reduce contingent bank guarantee requirements and to improve current balance sheet outcomes.

In schemes featuring central funds with insurers of last resort, failures from under-provisioning by both self-insured and underwriters impact alike. The resulting legacy costs lead to pressure on premiums and increasing deficits.

For this reason the requirement for regular presentation of actuarial assessments to the licensing authority for comprehensive due diligence review is paramount. Such review represents a significant responsibility for such authorities and necessitate that they are adequately resourced both operationally and legislatively as the consequences of under-provisioning are well documented for both the individual company and the insurance underwriter.

Prudential Supervision *- The NCC seeks views from jurisdictions on assertions by some that government-owned monopoly insurance provides greater certainty as to financial position of the insurer than is the case otherwise.*

Not having local private workers' compensation insurance market on which to base such a comparison, Queensland is not in a position to offer comment on the question raised from direct experience.

The government does however maintain close oversight of the operations of WorkCover through legislated review and reporting arrangements. A full report of scheme operations and funding is required to be provided to government quarterly and actuarial assessments are provided in support of premium setting recommendations. Further, as a candidate Government Owned Corporation, WorkCover is required to provide regular updates as to its financial position to enable its liability for state Income Tax Equivalents to be assessed. Further, the portfolio Minister has the reserve power to direct WorkCover in aspects of its operations.

Impact of recent civil liability reforms *- The Council seeks advice as to the likely impact of recent reforms to civil liability provisions to Workers' Compensation in Queensland.*

The reforms referred to were introduced through the *Personal Injury Proceedings Act 2002* and do not apply to workers' compensation actions, the proceedings process for which is contained in the *WorkCover Queensland Act 1996.* The *Personal Injury Proceedings Act 2002* represented the first stage of the Government's personal injuries law reform program. The Civil Liability Bill 2003 represents the second stage of reforms. This will only apply to personal injuries incurred outside of the workplace. The Government has agreed to re-assess the applicability of these reforms to workers compensation claims in 12 months time.

1.5.3 Legal Professional Indemnity Insurance

Context

Characterising the State schemes as monopolies is not necessarily correct, except in the case of mutual funds. Where tender arrangements are in place, insurers are able to compete for the work.

The principal objective of the current legislative requirement is to ensure that, for the protection of consumers, those who practise as solicitors maintain minimum professional indemnity cover. The Queensland Government has previously announced an intention to extend this requirement to barristers when a practising certificate scheme for barristers is introduced. The availability of run off cover is an important consideration to ensure that the public is covered for claims made after a practitioner retires from practice or ceases practice temporarily.

Historically, the insurance arrangements have been jurisdictionally based through the relevant professional body, with national firms exempted from local requirements when insuring in another jurisdiction.

Following 11 September 2001, the demise of FAI and HIH and the tightening by APRA of the prudential standards for insurers, there has been a contraction in the market with schemes accessing professional indemnity insurance in some cases having few choices available to them and having to explore captive insurance options to minimise costs of cover for some risk levels. The difficulties experienced by the departure of the Queensland Law Society's main professional indemnity insurer attests to that development.

This development is not limited to the legal profession with other professions (e.g. accountants, engineers) being unable to obtain cover and medical practitioners being unable to obtain run off cover.

Despite the number of reviews, none of the professional bodies (including the Law Council of Australia), individual practitioners or firms, national firms, insurers or insurance syndicates have sought legislative change based on a concrete proposal for alternative insurance arrangements.

Work is being done with the Law Council of Australia (LCA) as part of the national model laws legal profession project for the development of uniform minimum standards for insurance nationally. As part of the national review through Standing Committee of Attorneys-General, it is envisaged that lawyers would, at least for national practice, be required to have insurance complying with the minimum standards from an approved insurer or scheme as a condition for a practising certificate (although Governments have not made a decision on the proposal at this stage).

The decision whether or not to approve a new scheme would be a complex process. It would involve an economic, commercial and financial assessment of:

- the implications for a new scheme for the long term viability of insurance for this risk (in hard and soft market cycles) and not just having regard to premium prices at a point in time (e.g. a scheme may only propose to cover the best risks);
- the risk of market failure; and
- the implications of the risk of critical mass for the benefits of self insurance.

If another scheme were to be approved, there may be legislative or transitional issues for the existing scheme (in respect of excess reserves etc, timing of the new entry may need to wait until existing insurance contracts covering the whole local profession for a number of years ahead expires)

Coverage of all practitioners

Current schemes can manage risk of insurer failure through panel arrangements and maintaining a level of self insurance. There is no reason why premiums under State schemes could not be structured to reflect the relevant commercial risk. Negotiation of insurance by individuals would be difficult in the current market. See "Context:" above

Cost effective coverage

The Department has no data to support the proposition. The Queensland Law Society could be asked but it is doubted that it would be available. It would be able to argue that negotiated a better price than first on offer. The Society would not have data in respect of the alternative. As stated previously, the perception in the current market (where professional indemnity insurance is not being offered to some professions) is that individual practitioners may find it difficult to obtain insurance.

Delivery of run-off cover

As stated in "Context", the experience of doctors and the difficulties other professions are experiencing in obtaining current insurance, supports the proposition that negotiating run off insurance for individual practitioners may be difficult.

Prudential supervision

The requirement that an insurer or scheme be approved does provide an opportunity for additional scrutiny and comparison of its policies and practices.

Risk Management

With regard to risk management, price signals through insurance premiums may not be interpreted as such or actioned. They would not work as well as an across the market analysis of risk and targeted education program for the members of the profession in best practice in the interest of keepings claims and therefore premiums lower.

Further information

The Government's decisions in this area are yet to be announced. As stated in "Context", as part of the national review through SCAG , it is envisaged that lawyers would be required to have insurance complying with the minimum standards from an approved insurer or scheme as a condition for a practising certificate.

1.5.4 Civil Liability Reforms

The NCC is seeking information on what impact the Government's recent law reforms will have on the markets for Compulsory Third Party (CTP) motor vehicle insurance, workers compensation and legal professional indemnity insurance.

At this stage, the reforms will apply only to personal injuries incurred outside of the workplace eg CTP, medical indemnity insurance and public liability. The Civil Liability reforms will not apply to Work Cover at this stage. The Government has agreed that the reforms contained in the Civil Liability Bill will be reviewed in 12 months so that their applicability to workers compensation can be assessed.

The key reforms in relation to legal professional indemnity insurance relate to the introduction of proportionate liability for non-personal injury cases for claims over $500,000 and codifying the standard of care for professional groups to protect against liability for acts performed in accordance with a respected body of professional opinion.

The second stage of reforms, the Civil Liability Bill 2003 was introduced into Parliament on 11 March 2003. The reforms will not apply to incidents that occurred prior to 2 December 2002, the date of Cabinet approval and public announcement. The first stage of reforms, the *Personal Injuries Proceedings Act 2002* was introduced by the Government in June 2002. These reforms included restrictions on legal advertising, caps on economic loss and revised claims notification procedures.

It is likely that the reforms proposed will reduce the overall liability of insurers and should encourage insurers to be less restrictive in the scope of risks they are prepared to underwrite and also generally provide more affordable insurance.

An actuarial report by PricewaterhouseCoopers which found that the reforms advocated by the Expert Panel reviewing the law of negligence (which forms the basis of many of Queensland's reforms) could theoretically reduce public liability insurance premiums by around 13.5 per cent. Significant reductions in medical indemnity insurance premiums of between 15 and 18 per cent were also estimated.

However it is difficult to confirm categorically the overall impact of these reforms on insurance premiums partially due to the long tail nature of the industry and the wide range of risks covered particularly in relation to liability insurance. The insurance industry has not given a commitment to reduce premiums or provide insurance in those areas where they have recently withdrawn coverage.

2. COMPETITIVE NEUTRALITY

2.1 Background

Under Clause 3 of the CPA, each jurisdiction is required to consider applying competitive neutrality principles to it significant business activities where it can be demonstrated that the benefits to the community would outweigh the costs. Competitive neutrality means that government businesses should not enjoy any net competitive advantage over their competitors simply as a result of their public sector ownership. Each government is free to determine its own agenda for the implementation of competitive neutrality principles.

2.2 Competitive Neutrality Implementation Progress

2.2.1 TAFE

At the time of the last assessment, the Queensland Government had endorsed the application of competitive neutrality principles to TAFE Queensland Institutes where they compete directly with private provider on price, and the implementation of a full cost pricing (FCP) model for competitive purchasing and fee for service programs by February 2002. The FCP model is now basically operational in relation to these programs. An update on progress follows:

- the *TAFE Queensland Competitive Neutrality – Policy and Guidelines* were introduced in February 2002. The guidelines include an FCP model, a complaints mechanism and maintenance and review specifications;

- a document entitled *TAFE Queensland Competitive Neutrality Adjustment Model – Explanatory Note* was also introduced in February 2002. The model contains a number of elements, which are combined to determine the net advantage/disadvantage that TAFE Institutes have in comparison to private sector competitors;

- In December 2002, the Department of Employment and Training conducted a survey of the 15 TAFE Institutes to assess adherence to the policy and procedures. The key findings were:
  - all Institutes have a nominated officer responsible for reviewing and overseeing the application of the policy and procedures;
  - all but one of the 15 Institutes had applied FCP principles, either through using the model or alternative methods. FCP was not applicable to the activities of the remaining Institute;
  - the competitive neutrality adjustment factor (currently assessed as a net disadvantage to TAFE) was applied by nine institutes with one not applicable. The remainder have opted not to adjust prices for the net disadvantage. The adjustment factor is recalculated annually, with the most recent adjustment based on 30 June 2002 financial data; and
  - some Institutes had experienced difficulties in applying the policy and a need for training in some areas was identified and is being addressed.

2.2.2 Forestry

For Queensland's publicly owned forestry business, DPI Forestry, the NCC is seeking information on the application of competitive neutrality to its activities, including:

- setting a clear commercial objective for the business and directly funding any CSOs;
- separating policy advisory and regulatory functions from commercial functions;
- setting the enterprise's core business, valuation, target rate of return, capital structure and dividend policy;
- imposing on the enterprise, Commonwealth and State/Territory taxes or tax equivalent systems, debt guarantee fees and those regulations to which private enterprises are normally subject;
- delegating to the enterprise's board and management full authority over pricing, operational, employment, investment and financing decisions; and
- regular reporting and monitoring of the commercial performance of the enterprise.

The fundamental requirement of this model is that forest agencies must charge prices for timber that, over the longer term, generate revenues that at least cover the costs of managing their forests for timber supply and provide a commercial return on the assets employed in timber production. The NCC has raised particular concerns about the costs that underpricing of timber from native forests imposes in terms of over-exploitation, slower productivity growth and the development of private plantations.

Under clause 3 of the CPA, each jurisdiction is free to determine its own agenda for the implementation of competitive neutrality principles. For DPI Forestry, this has involved its establishment as an entirely separate business group of the Department of Primary Industries and its operation as a fully-commercialised entity in accordance with its *Commercialisation Charter* as ratified by State Cabinet. The Commercialisation Charter is based on the principles of:

- competitive neutrality;
- clear and non-conflicting objectives;
- appropriate levels of management responsibility, authority and autonomy; and
- accountability for performance.

As such, the commercialisation model applied to DPI Forestry goes well beyond the requirements of cost-reflective pricing and aims to create a business environment which permits achievement of the maximum possible level of commercial performance short of corporatisation. The key elements of the model as it applies to QPI Forestry are as follows:

Core Business

DPI Forestry's core business is the commercial management of forest production and associated timber marketing from State-owned plantations and native forest areas, with plantation-based reserves making up the vast majority of timber volumes and revenues for the business.

Business Goal

DPI Forestry's business goal is to maximise the market value of its assets within a sustainable development framework. This goal recognises the need for sustainable production systems in a long term business such as forestry. DPI Forestry is required to achieve a long run economic rate of return benchmark, with annual economic rate of return targets to be determined as part of the performance contract negotiations.

Operational Framework

EPA is the controlling agency for state owned plantations and native forest areas and has responsibility for regulatory and custodial functions, including developing and prescribing environmental and forest management codes of practice and standards, and independently monitoring DPI Forestry's compliance. DPI Forestry operates commercially on state owned plantations and native forest areas to which it is granted access by the EPA.

DPI Forestry's *Commercialisation Charter* specifically details requirements in relation to the provision of services required by government, where provision of these services is not in its commercial interests. These include identification, funding and monitoring of CSO's. No current activities require implementation of CSO arrangements.

Corporate Governance

DPI Forestry is a separate commercialised business group of the Department of Primary Industries, and as such, remains ultimately accountable to the Director-General of the Department and subject to a range of public sector statutory requirements. Governance arrangements have been put in place which recognise these responsibilities at the strategic level while leaving the day to day operations to DPI Forestry's management. These governance arrangements include:

- ensuring appropriate objectives and strategies are established based on prudent risk management and supported by an effective and efficient system of management and internal control;
- making management accountable to the organisation's Shareholding Ministers (the Treasurer and the Minister for Primary Industries and Rural Communities); and
- ensuring transparency of management decision-making, action and performance through the flow of adequate and timely information to stakeholders.

Under this Governance structure, DPI Forestry management's role is to ensure that key performance accountabilities to external stakeholders (e.g. commercial performance, financial management etc) are being achieved and managed, key risks facing the organisation (e.g. environmental, legal, financial) are identified and effectively managed, and established policies, standards and protocols are being appropriately observed and reviewed.

Formal delegations have been put in place conferring to the Executive Director DPI Forestry authority over pricing. Most operational, employment, investment and financing decisions have also been delegated; however some statutory limits of authority are imposed that reflect government protocols in these areas (e.g. expenditure delegation limits).

Recent external audits have attested to the soundness of DPI Forestry's governance systems and practices.

Commercial Reporting and Monitoring

DPI Forestry financial and non-financial targets are established and monitored annually in the organisation's performance contract between the Treasurer and the Minister for Primary Industries and Rural Communities. This contract specifies annual business performance targets and reporting, significant business initiatives and issues, capital, dividend, risk management, asset management, industrial relations and accounting policy.

Under these arrangements DPI Forestry is required to provide a half-year progress report against the performance contract to shareholding Ministers. In addition an annual report of DPI Forestry's financial and non-financial performance is published in a yearbook. The yearbook clearly documents DPI forestry commercial performance including among other things, its core business, asset valuations, return on assets, dividend payments, debt to equity ratio, current ratio and timber sales.

DPI Forestry commercial performance is monitored by Treasury on behalf of the Shareholding Ministers.

Competitive neutrality

DPI Forestry either is subject to taxes or charges that would apply to similar private sector organisations or pays or accounts for tax or other equivalents. No financing advantage is gained as a result of DPI Forestry's status as a Government-owned business unit. All regulatory conditions which would apply to a similar private sector organisation apply equally to DPI Forestry. A target rate of return on assets is set via reference to commercial cost of capital.

Specifically, DPI Forestry:

- is subject to the National Tax Equivalents Regime administered by the Australian Tax Office and is liable for GST;
- applies debt guarantee fees based on its "stand alone" credit rating;
- pays payroll tax and workers compensation charges on salaries and wages;
- pays debits tax; and
- pays land tax for land held under freehold title.

DPI Forestry is currently exempt from local government rates. The exemption reflects the organisation's independence from services generally provided by local government such as refuse disposal services, kerb and channelling etc. DPI Forestry establishes and maintains roads in areas subject to commercial activity for both operational and public amenity use, whilst a memorandum of understanding with the Main Roads Department requires that DPI Forestry contribute funding to road infra-structure associated with any major expansion of plantation activities. DPI Forestry is currently exempt from stamp duty.

Pricing and Allocation

DPI Forestry is responsible for determining pricing and wood supply policies with the objective of maximising the market value of its assets. DPI Forestry has been declared to be a significant business activity under the *Queensland Competition Authority Act 1997*, and as such, is subject to legislative competitive neutrality complaint mechanisms.

The NCC has requested information in relation to potential underpricing of native forest timbers. Native forest harvesting activity is a relatively small and declining element DPI Forestry's overall business. In 2001-02, 87% of DPI Forestry's timber revenues were derived from softwood plantation timbers which are operated on a fully commercial basis, with the remaining 13% sourced from native forests. It is expected that plantation based revenues will continue to grow and native forest based revenues diminish, as more native hardwood plantations are established and increasing areas of native forest are transferred to conservation status.

Plantation Timber Sales Policy and Pricing

All current plantation sales permits had their origins in a competitive sales process. In issuing new plantation sales permits to existing customers on expiry of the original competitively-issued permits, prices are set to reflect, among other things, the current market price. To achieve this, DPI Forestry ensures there is always sufficient unallocated resource being sold through periodic competitive sales to provide adequate market price data for plantation timber.

All long term sale permits incorporate 5 yearly price review provisions. These review processes incorporate a range of factors such as changes in resource quality, prices achieved via competitive sales processes, prices of comparable domestic and overseas forest and timber products, end-user market trends and surveys, and the relativity between sale prices and movements in the CPI and other published timber indices. These reviews are supplemented with annual or more frequent price adjustments using composite market indices that reflect change in sawn timber prices and overall economic conditions.

Native Forest Timber Sales Policy and Pricing

The 1999 South East Queensland Forest Agreement (SEQFA) provides for the staged withdrawal from native hardwood harvesting from State lands over a 25 year period. Native forests in these areas will progressively be transferred from production to conservation status. Native hardwood plantations are being established to provide for ongoing sawlog supply beyond this period. At the commencement of the SEQFA, new allocations were provided to existing allocation holders commensurate with this time frame.

In other areas (outside South East Queensland) annual allocations are in place and these arrangements are under review as part of the current "Statewide Forest Process", expected to conclude during 2003.

In native cypress allocation arrangements are of a shorter duration (15 years with 5x5x5 review provisions).

The non-competitive native forest sawlog allocation system was subject to a public benefit test (PBT) as part of the legislative review of the *Forestry Act 1959*. The PBT was undertaken in accordance with the Queensland Government's *Public Benefit Test Guidelines* and concluded that there is a public benefit in retaining some non-competitive access to native forest sawlogs based on the present form of the allocation system. Information on the review of the forestry legislation is included in Section 1.3 on priority review matters.

Native sawlog pricing arrangements incorporate three to five yearly price review processes that take into account a range of factors including changes in resource quality, values achieved through DPI Forestry competitive sales processes (where available), values of comparable domestic forest and timber products, end-user market trends and surveys, full cost of sawlog production, industry ability to pay and movements in the CPI and other published timber indices. These reviews are supplemented with annual or more frequent value reviews using composite market indices that reflect change in sawn timber prices and overall economic health. Prices have increased significantly in recent years via reference to the above factors and reflecting the withdrawal from timber production of significant areas of native forest both in Queensland and NSW.

Summary

DPI Forestry has been established as a separate fully commercial business group within the Department of Primary Industries with appropriate performance monitoring arrangements. Its prime focus on commercial softwood plantations, and improving commercial performance in its relatively small native hardwood operations, means that underpricing is not a significant issue.

2.2.3 Public Trust Office

In 2002, the Queensland Government reported that the Public Trust Office (PTO) had been directed to implement recommendations of the earlier public benefit test related to:

- a fairer and simpler fee structure;
- transparent Community Service Obligation (CSO) funding;
- the elimination of cross subsidisation; and
- establishment of an appropriate capital structure.

Implementation was to be staged over three years. The first element, a fairer and simpler fee structure, was implemented during 2001 and achieved full cost pricing in aggregate.

Operational systems and the recording of CSOs were improved during 2002 in line with established standards. These improvements, along with the revised fee structure, have enabled the PTO to eliminate cross subsidies and providing a fully transparent accounting for CSO's – thereby implementing the second and third elements of the staged implementation program.

The remaining element of the competitive neutrality implementation program, the establishment of an appropriate capital structure, along with the necessary accounting segregation of the Common Fund, is scheduled to be in place by 1 July 2003.

The PTO faces a continuing increase in demand generally, and in the Disability Services area in particular. Its services and systems will be monitored closely to ensure the benefits of competitive neutrality are maintained without adversely affecting its delivery of its social justice objectives.

2.3 Complaints

2.3.1 Complaints to the Queensland Competition Authority

In 2002, the QCA did not receive any competitive neutrality complaints, nor were any complaints resolved.

2.3.2 Complaints to Queensland Treasury

Queensland Treasury received a number of inquiries during 2002, but none have resulted in complaints being lodged.

The Department of Main Roads received a complaint in August 2002 from Stabilised Pavements of Australia alleging that RoadTek (Main Road's commercialised service delivery business) was obtaining and using unfair competitive advantage in their contracting of stabilisation services. Main Roads has commissioned Ernst and Young to conduct an independent review into the issue. Main Roads is liaising with Ernst and Young regarding this issue and is currently providing information and awaiting finalisation of the report.

A small number of complaints were received by some other agencies, but they were resolved following initial discussions.

2.4 Government Trading Enterprises

The NCC has requested comment on the reasons for rates of return on capital in 2000-01 being below the 10 year Commonwealth bond rate of 5.8 per cent for some GBEs as identified by the Productivity Commission report *Financial Performance of Government Trading Enterprises 1996-97 to 2000-01*.

A number of Queensland Government Owned Corporations (GOCs) have experienced rates of return below the 10 year Commonwealth bond rate. The reason in relation to each of the relevant GOCs is as follows:

- *Sunwater* – Commercial returns for Sunwater are constrained by the regulated transitional pricing paths for water that began in October 2000. For those water supply schemes not achieving a minimum of ARMCANZ lower bound cost recovery, transitional pricing paths have been implemented to move water prices towards lower bound cost recovery (i.e. cost recovery rather than a commercial return). Transitional arrangements are also in place to move Sunwater's local government customers towards commercial pricing arrangements. The low return attained by Sunwater in 2000-01 was not as a result of anti-competitive pricing but rather regulated pricing;

- *Port of Brisbane Corporation* – The lower return on equity (ROE) achieved by Port of Brisbane Corporation in 2000/01 arose as the result of: significant increases in the asset and equity base associated with rapid port expansion; and significant borrowing costs associated with loans for the Brisbane Airport Corporation Limited. Capital works of $95.263 million were undertaken in 2000-01, and included the construction of Berth 8 and the building of a Visitor's Centre;

- *Gladstone Port Authority* – The ROE achieved by Gladstone Port Authority in 2000-01 was also lower than 5.8% due to a rapid expansion of port facilities increasing the asset and equity base. Capital works undertaken in 2000-01 totalled $41.9 million, and included the construction of the third berth and upgrading the rail unloading system at the RG Tanna Coal Terminal, and completing a new rail loop at the Barney Point Terminal;

- *Queensland Rail* – Queensland Rail's return on equity figure in 2000-01 was affected by a number of factors, primarily a change in the accounting treatment for the revaluation of leased assets;

- *Enertrade* – Enertrade's core business is to manage a range of Power Purchase Agreements under which it trades the output from contracted generation stations into the electricity market. Changes in the electricity market, such as increased generation capacity, have adversely affected Enertrade's commercial returns; and

- *Ergon Energy* – The major focus for 2000-01, the second year Ergon Energy operated as an amalgamated entity, was on transforming the organisation along functional rather than geographic lines and improving the level of efficiency within the business. This focus resulted in high levels of operating expenditure, which adversely affected the Return on Assets (ROA) achievable in 2000-01. ROA was also adversely affected by an increase in assets values following a revaluation as part of the regulated revenue cap determination for 2000-01. Calculating ROA using data produced in accordance with accounting standards gives an ROA of 5.6%, which is much closer to the risk free rate of 5.8% than the 5.1% calculated by the Productivity Commission.[3]

[3] The Productivity Commission calculates its ratios from data reported under Government Finance Statistics for the Australian Bureau of Statistics. This data differs from GOC's financial statements produced in accordance with accounting standards

3. STRUCTURAL REFORM

3.1 Background

Under Clause 4 of the Competition Principles Agreement, before introducing competition to a sector traditionally supplied by a public monopoly, or privatising a public monopoly, jurisdictions are required to review a range of structural reform matters related to commercial objectives, natural monopoly considerations, regulatory functions, competitive neutrality, community service obligations, price and service regulation and corporate finance matters. Each jurisdiction is free to determine its own agenda for the reform of public monopolies.

3.2 Structural Reform Progress

3.2.1 Dalrymple Bay Coal Terminal

On 14 September 2001, the Queensland government entered into a long term lease of 50 years, with a 49 year option, for the Dalrymple Bay Coal Terminal (DBCT). A government owned company, DBCT Holdings Pty Ltd was established to act as lessor in the transaction.

As DBCT is in effect a monopoly service provider to a number of coal mining companies exporting through the port, access is being administered under the regulatory control of the Queensland Competition Authority (QCA). DBCT was declared by Regulation pursuant to the QCA Act in March 2001, prior to the commencement of the lease.

The lease agreements require the lessee to prepare a Draft Access Undertaking and to submit it to the QCA for approval, after first obtaining the approval of DBCT Holdings. Prior to an approved Access Undertaking being in place, the lessee is required to negotiate in good faith with prospective users on terms consistent with existing user agreements.

The lease documentation required the Draft Access Undertaking to be submitted to DBCT Holdings within twelve months of the commencement of the lease, that is, by 14 September 2002. However, the lessee has been granted an extension for the submission of the Draft Access Undertaking to DBCT Holdings until 14 May 2003.

3.2.2 Brisbane Market Corporation

As reported in 2002, the statutory exclusivity provisions enjoyed by the Brisbane Markets Authority for the wholesaling of fruit and vegetables in the City of Brisbane were repealed prior to the establishment of the Brisbane Market Corporation (BMC) as a Government Owned Corporation.

The Government completed the sale of the BMC as a going concern (comprising all land, buildings, assets and leases) on 30 September 2002 to an industry-based consortium led by Landacq Limited for $74 million. The Corporation's core business is the provision of facilities and services for the wholesaling and distribution of fruit, vegetables and flowers in the Brisbane metropolitan area.

4. PRICES OVERSIGHT

4.1 Background

Clause 2 (Prices Oversight of Government Business Enterprises) of the Competition Principles Agreement requires each State and Territory to consider establishing independent sources of prices oversight where these do not exist. The independent source of prices oversight must have the following characteristics:

(a) it should be independent from the government business enterprise whose prices are being assessed;
(b) its prime objective should be one of efficient resource allocation, but with regard to any explicitly identified and defined community service obligations imposed on a business enterprise by the government or legislature of the jurisdiction that owns the enterprise;
(c) it should apply to all significant government business enterprises that are monopoly, or near monopoly, suppliers of goods or services (or both);
(d) it should permit submissions by interested persons; and
(e) its pricing recommendations, and the reasons for them, should be published.

In fulfilment of this obligation, Queensland established the Queensland Competition Authority (QCA) in 1997 with the above characteristics.

4.2 Government Monopoly Business Activities

In Queensland, prices oversight applies to:

(a) State and local government business activities which are monopolies or near monopolies that have been declared by the Premier and the Treasurer to be Government Monopoly Business Activities; and

(b) Private sector water suppliers (including the jointly owned State/local government company SEQWater).

In the reporting year, the Premier and the Treasurer declared the water and sewerage services provided by the largest eighteen local governments in Queensland to be Government Monopoly Business Activities (i.e. Brisbane, Gold Coast, Rockhampton, Townsville, Toowoomba, Ipswich, Logan, Caboolture, Cairns, Caloundra, Harvey Bay, Mackay, Maroochy, Noosa, Pine Rivers, Redland, Thuringowa and Bundaberg).

The Premier and the Treasurer have also declared the following activities to be Government Monopoly Business Activities:

- the bulk water storage, water distribution and retail reticulation and drainage activities of SunWater;
- the bulk water storage, water delivery and treatment services and supply of water by Gladstone Area Water Board; and
- the bulk water storage and water distribution activities of the Mt. Isa Water Board.

An investigation into whether the bulk water storage and water distribution activities of the Townsville-Thuringowa Water Supply Board (“NQ Water”) meet monopoly criteria was

completed. The investigation found these services meet the criteria for declaration. A statutory period of consultation is now being undertaken before a decision is made on declaration.

4.3 Pricing Investigations

Pricing complaints received in the past year include:

(a) the Pioneer Valley Water Board requesting investigation of the prices charged by SunWater for the Pioneer River Water Supply Scheme;
(b) a consumer alleging the one-off sewerage transition fee charged by the Brisbane City Council's commercialised business unit (Brisbane Water) was evidence of abuse of monopoly position;
(c) a company alleging the Brisbane Water's charges to industrial customers constitute a monopoly rent and are indicative of cross subsidisation;
(d) an oil company alleging the prices charged by Townsville Port Authority are unreasonably high when compared with other ports in Australia;
(e) a ratepayer alleging the Bundaberg City Council was overcharging; and
(f) a ratepayer alleging Brisbane Water's charging of landlords in lieu of individual tenants was not consistent with the National Competition Policy principles.

Treasury investigated, or is in the process of investigating, the substance of the claims. In relation to claims (a), (b), (e) and (f), it was found that there was insufficient evidence to warrant a referral and full pricing investigation by the QCA. In relation to claim (a), the Pioneer Valley Water Board has requested reasons for the decision and this matter is still progressing. In relation to claim (f), the complainant is pursuing the matter further. Investigations by Treasury are underway in relation to claims (c) and (d).

One pricing investigation was completed in 2002. The Gladstone Area Water Board was referred in 2000 to the QCA by the Premier and the Treasurer for an investigation into its pricing practices. The QCA published its Final Report in September 2002. The Premier and the Treasurer are currently considering the Report's recommendations.

Related to prices oversight investigations but not part of the formal regime, are investigations undertaken by the QCA pursuant to section 10 (e) of the *Queensland Competition Authority Act 1997*. These investigations are undertaken at the direction of the Premier and the Treasurer and may relate to any matter regarding the implementation of competition policy. The following investigations commenced, or progressed, this reporting year:

(a) In January 2003, the Ministers directed the Authority to identify the general pricing principles which should underpin the treatment of investments made in response to extraordinary circumstances such as drought, with specific reference to the circumstances pertaining to the Gladstone Area Water Board; and

(b) The Authority released its draft report *"Burdekin Haughton Water Supply Scheme: assessment of certain pricing matters relating to the Burdekin irrigation area"* in September 2002. The final report is due 30 March 2003. This report deals with issues relating to claims by irrigators that they have made capital contributions to the Scheme and are therefore entitled to concessional pricing.

5. THIRD PARTY ACCESS

5.1 Background

Access to the services provided by electricity and gas pipeline infrastructure is governed by the respective uniform national access codes for these industries.

Access to services provided by other facilities is governed by either Part 5 of the *Queensland Competition Authority Act 1997* or Part IIIA of the *Trade Practices Act 1974*.

5.2 Services covered by the Queensland Competition Authority Act 1997

The services which have been declared under the Act are:

(a) the rail transportation service provided by the use of Queensland Rail's track infrastructure; and

(b) the coal loading and unloading services provided by the use of the Dalrymple Bay Coal Terminal.

5.3 Recent Activities

There has been no recent activity. In the past reporting year the Government did not receive any applications for the declaration of services under the QCA Act.

6. LOCAL GOVERNMENT

6.1 Introduction

As outlined in previous reports to the NCC, the Government's strategy for applying NCP reforms to Queensland local governments initially focussed on the largest business activities through the application of competitive neutrality reforms to the significant business activities (SBAs) of the 18 largest local governments. This represents over 80% of local government business activity in Queensland.

The largest 18 local governments have essentially completed the application of competitive neutrality reforms to their SBAs and have subsequently also demonstrated substantial progress in applying competitive neutrality reforms to their smaller business activities.

Over the past two years, the Government has focussed attention on NCP reforms in smaller local governments through its Business Management Assistance Program (BMAP). Details of BMAPs work program and individual components are contained within the Queensland Government's 2002 Report to the NCC.

BMAP, which is coordinated by the Local Government Association of Queensland (LGAQ), is proving very successful with 119 councils requesting and receiving some form of support from the BMAP consultants.

In summary, the good progress being achieved in NCP reform by local governments in Queensland is due to a combination of factors including:

- the financial incentives available under the $150 million Local Government Financial Incentive Package (LGFIP) to local governments which implement such reforms;
- the demonstrated benefits achieved by local governments as a result of undertaking the reforms; and
- the training and support initiatives provided by the Department of Local Government and Planning (DLGP), the Queensland Competition Authority (QCA) and the LGAQ, especially through BMAP. It is anticipated these efforts in training and advice to local governments will continue to achieve the desired reform outcomes over the remaining life of the Financial Incentive Package.

The LGFIP also provides incentives to encourage other important elements of the NCP reforms such as the review of anti-competitive provisions for all the local laws of Queensland local governments.

In particular, BMAP has been especially successful in convincing councils to widen their reform agenda to businesses that were not previously undergoing reform. As at the final deadline for accepting new businesses into the LGFIP, there were 731 businesses listed within the FIP. This represents a substantial increase in the number of businesses undergoing reform. More importantly however, the QCA has reported that the rate of reform being achieved by these smaller to medium sized councils is well above expectations.

The Legislative Framework

The State Government has put in place a comprehensive legislative framework to support its local government NCP reform program through the *Local Government Act (1993)* (LGA). This framework has been supplemented in recent years by amendments to the *Income Tax Assessment Act 1936* which removed certain impediments to the corporatisation of local government business activities.

Training Initiatives

As outlined above and in previous annual reports to the NCC, the State Government has worked closely with the LGAQ and the QCA to provide appropriate training and resource material to enable local governments to make informed NCP implementation decisions. The approach has been to provide practical focussed information directed at identifying knowledge gaps of local governments, and to provide useful assistance and advice and to clarify issues of concern to local governments. As outlined earlier this approach is proving highly effective.

6.2 Competitive Neutrality

With competitive neutrality reforms largely completed for the SBAs, the focus has shifted to the smaller business activities. BMAP has successfully increased the speed and level of reform that smaller to medium sized councils have adopted the reforms

Over the last twelve months there has been a significant increase in the level of reform being commenced by local governments outside of the largest 18 local governments. Excluding those businesses operated by the largest 18, there has been a 309% increase[4] in the number of Type 3 businesses for which reform has commenced. For non-type 3 businesses outside of the largest 18 there has been an equally impressive 314% increase[5] in the number of businesses that have applied the Code of Competitive Conduct (the Code)[6].

Attachment 5 contains the summary of all local government businesses currently undertaking competitive neutrality reform. The table indicates the type of reform being taken, their progress with regard to the implementation of full cost pricing (FCP) and other pertinent details. For the purposes of interpreting Attachment 5, the QCA has given a rating to each council based on how many of these elements are in place. The ratings are:

- "All", 100% of the elements of FCP have been implemented;
- "Most", 75% or greater of the elements of FCP have been implemented;
- "Many", 50% or greater of the elements of FCP have been implemented;
- "Some", 25% or greater of the elements of FCP have been implemented; and
- "None", 0% or greater of the elements of FCP have been implemented.

[4] 66 Businesses fulfilled this criteria last year, and this figure has risen to 204 this year.
[5] 133 Businesses fulfilled this criteria last year, and this figure has risen to 418 this year.
[6] The Code of Competitive Conduct (the Code) forms part of the Local Government Finance Standard, which in turn is subordinate legislation to the LGA. The code comprises four major components:
- full cost pricing;
- the appropriate treatment of CSOs;
- the elimination of the advantages and disadvantages of public ownership; and
- certain additional requirements to local government financial reporting.

6.2.1 Reform Progress

Type 1 Businesses

Type 1 SBAs are those identified under the LGA that generate expenditure in excess of $31.4 million for water and sewerage activities, or $18.8 million in the case of other activities. The LGA requires that such businesses must implement at least full cost pricing (FCP) within the business activity. To date, nine Type 1 SBAs have been identified and all except one have implemented 100% of the elements of FCP (see Attachment 5).

Eight of the Type 1 SBAs have been successfully commercialised. Commercialisation requires the council to set in place various competitive neutrality adjustments such as the inclusion of tax equivalence into costs. The business is required to be run as a separate business unit of the council and various accounting separations are required.

The remaining council activity has successfully applied full cost pricing to its operation. FCP is a more methodical and complete version of full cost recovery. FCP requires the inclusion of tax equivalence and the generation of a return on capital. However, the application of FCP does not require the activity to develop the same level of managerial autonomy from the council that commercialisation does.

All nine Type 1 SBAs have established an appropriate complaints mechanism for hearing competitive neutrality. No competitive neutrality complaints were made against the Type 1 SBAs.

Type 2 Businesses

Type 2 SBAs are those identified under the LGA that generate expenditure in excess of $9.4 million for water and sewerage activities, or $6.2 million in the case of other activities. To date 22 such activities have been identified[7] (see Attachment 5). Progress is as follows:

- 11 of these SBAs have implemented all the elements of FCP;
- 7 of these SBAs have implemented most of the elements of FCP;
- 1 SBA has implemented many of the elements of FCP;
- 2 of these SBAs are not yet achieving Full Cost Recovery; and
- 1 SBA has not yet completed its Public Benefit Analysis (Cairns Works).

Nineteen of these SBAs have been commercialised while the remaining three businesses are implementing Full Cost Pricing.

Twenty of the existing Type 2 SBAs have instituted a competitive neutrality complaints process. Cairns Works has yet to adopt an appropriate process and Ipswich Cleansing (Refuse) did not indicate whether it had a process in place. No competitive neutrality complaints have been made against Type 2 businesses to date.

[7] This figure has increased by 1 since last year with the inclusion of Cairns Works.

Type 3 Businesses

Type 3 businesses are those businesses whose annual expenditure exceeds $200,000 and are considered to be in competition with the private sector. The benchmark level of reform for a Type 3 business is the adoption of the Code of Competitive Conduct (the Code).

Where councils opt to apply the Code to the business in question, they are bound to abide by the Code pursuant to s764 of the LGA. Furthermore, the LGA requires any competitive roads businesses of councils to apply the Code.

As of 1 July 2002, there were 202 Type 3 businesses which are applying, or were about to apply the Code. Two businesses advised that they were intending to commercialise their business activities. The number of commercialised Type 3 businesses has dropped from last year with Redlands Shire Council reducing the level of reform it is applying to five of its businesses.

Of these 202 Type 3 businesses:

- 69 have provided evidence that all elements of FCP were being applied to the business;
- 38 indicated that they were applying most of the elements of FCP to the business;
- 27 indicated that they were applying many of the elements of FCP to the business;
- 23 indicated that they were applying some of the elements of FCP to the business;
- 42 were found to not yet be meeting the requirements of full cost recovery; and
- 5 did not provide sufficient information to make a determination regarding their current progress with regard to the implementation of the various elements of full cost pricing or full cost recovery.

Non Type 3 Businesses

Non-Type 3 businesses are those businesses that generate greater than $200,000 in expenditure each year and are not considered to be in direct competition with the private sector. These businesses are not required to apply any of the NCP reforms, however the Queensland Government encourages them to do so through the FIP.

To the 1st of July 2002 there were 418 non-Type 3 businesses that had applied the Code or were intending to do so within the near future. Of these 418 businesses:

- 90 provided evidence that they had implemented all of the elements of FCP;
- 95 indicated that they had implemented most of the elements of FCP;
- 67 indicated that they had implemented many of the elements of FCP;
- 59 indicated that they had implemented some of the elements of FCP;
- 86 were found to not yet be meeting the requirement of FCP; and
- 24 did not provide sufficient information to make an effective assessment regarding their implementation of FCP or full cost recovery;

6.3 Competitive Neutrality Complaint Process

6.3.1 Complaints Framework

An amendment to the LGA in December 1997 created the framework for the complaint and accreditation processes for local government business activities to which competitive neutrality reforms are applied. This was modelled on the processes applying at the State Government level, including the role of the QCA. In essence, once a competitive neutrality reform has been applied to any local government business activity, the local government must establish a process to deal with complaints about breaches of competitive neutrality. Details of the processes required were outlined in Queensland's 1999 annual report to the NCC.

Of the 653 businesses subjected or committed to competitive neutrality reform to date:

- 561 local government business activities are subject to in-house complaint processes; and
- no evidence has been provided of a valid complaints process for the remaining business activities (92). This statistic is considered to be transitory due to the huge increase in new businesses entering the scheme which have only recently commenced reforms. The Government expects this figure to decline substantially by next year's report.

As noted earlier under section 1.3.10, the NCP review of the *Building Act 1975* recommended addressing the potential conflicts of interest in local government roles in building certification. Local governments can provide both building certification services that compete with private certifiers, as well as undertaking regulatory functions on which private certifiers rely.

While 21 local governments have voluntarily established complaints processes for their building certification services, action has been taken to make it mandatory for local governments which exceed a specified threshold level of building activity to establish a complaints process for their building certification services. In addition, the building industry will be provided with information about the complaints process in a user friendly format.

6.4 Community Service Obligations

Where Local Government Businesses commit to reform, the LGA and the Local Government Finance Standard require them to identify, cost and fund any Community Service Obligations (CSO) associated with the running of their business activities.

6.4.1 Significant Business Activities

In relation to the treatment of CSOs by SBAs(Type 1 or Type 2 businesses):

- 26 SBAs have identified at least one CSO, costed the CSOs and funded them appropriately from the council budget, additionally the details of the CSO are contained in the Council's annual report;
- 1 council business (Bundaberg Water and Sewerage) has identified a particular CSO. The business however has not yet costed or funded the CSO in question;

- 3 have conducted a process to identify CSOs and have found that none exist within the businesses examined, and;
- 1 business (Cairns Works), is a new SBA and has not yet completed its Public Benefit Analysis. Therefore it has not yet been able to identify any CSOs.

6.4.2 Type 3 Business Activities

In relation to the treatment of CSOs within the competitive Type 3 businesses:

- 47 have identified at least one CSO, costed the CSOs and funded them appropriately from the council budget;
- 24 have identified at least one CSO, but have not yet costed or funded the CSO from council's budget;
- 111 have conducted a process to identify CSOs and have found that none exist within that business;
- 6 businesses did not provide sufficient information in order to determine how they had treated CSOs, and;
- 40 businesses had not yet conducted an appropriate process to identify CSOs.

6.4.3 Non-Type 3 Business Activities

In relation to the treatment of CSOs within the non-competitive Non-Type 3 businesses:

- 92 have identified at least one CSO, costed the CSOs and funded them appropriately from the council budget;
- 67 have identified at least one CSO, but have not yet costed or funded the CSO from council's budget;
- 185 have conducted a process to identify CSOs and have found that none exist within that business;
- 22 businesses did not provide sufficient information in order to determine how they had treated CSOs, and;
- 99 businesses had not yet conducted an appropriate process to identify CSOs.

6.5 Local Government NCP Financial Incentive Package

Under the NCP local government Financial Incentive Package, the Queensland Government agreed to share up to $150 million (in 1994-95 prices) of its competition payments from the Commonwealth with local governments over the 5 year period commencing 1 July 1997 (six years for councils, but not including the Brisbane City Council, with approved business activities under BMAP).

As outlined in previous reports, the Financial Incentive Package is divided into three pools, and the distribution of funds across the pools shows the emphasis in the package on rewarding outcomes as follows:

- $1 million to provide training and assistance to local governments;
- $7.5 million to assist local governments with undertaking NCP-related public benefit reviews (Review Pool); and
- $141.5 million to local governments implementing NCP reforms (Implementation Pool).

As indicated previously, the QCA is the body responsible for recommendations to the Queensland Government on payments to local governments from the implementation pool. The QCA has produced four annual reports covering progress up to 31 July in 1998, 1999, 2000 and 2001 respectively. These reports contained recommendations on the share of each local government's allocation to be paid for each year.

To date, a total of $113.3 million has been paid to local governments from the Implementation Pool, based on QCA assessment of reforms implemented up to 31 July 2001. These payments are as follows:

Reforms to 31/7/1998 ...$32.4 million based on QCA's 1998 report recommendations.

Reforms to 31/7/1999 ...$31.1 million based on QCA's 1999 report recommendations.

Reforms to 31/7/2000 ..$27.3 million based on QCA's 2001 report recommendations.

Reforms to 31/7/2001 ...$22.5 million based on QCA's 2002 report recommendations.

In addition, the QCA has recommended payment of $20.2 million to local governments for reforms completed in the year ending 31 July 2002. The majority of this payment is to smaller and medium sized councils.

6.6 Conclusion

Exceptional progress has been achieved in the application of NCP-related reforms to local governments in Queensland in line with the State's 1996 NCP application statement.

The QCA has rigorously assessed progress of reform by local governments and has recommended a total of $135.8 million of incentive payments for reforms achieved by local governments up to 31 July 2002.

Local governments have commenced or made a binding commitment to the competitive neutrality reform of around 653 business activities. Most councils have established competitive neutrality complaint mechanisms for these activities as required under the LGA. To date, there have been two formal complaints dealt with via local council's complaints mechanisms. Both have been resolved satisfactorily.

PART 2 – CONDUCT CODE AGREEMENT

7. TRADE PRACTICES

7.1 Background

Section 51(1) of the *Trade Practices Act 1974* provides for conduct, which would normally be an offence under the restrictive trade practice provisions of the Act, to be permitted if it is specifically authorised under Commonwealth, State and Territory Acts.

Clause 2(1) of the *Conduct Code* obliges jurisdictions to advise the Australian Competition and Consumer Commission (ACCC) in writing of legislation which relies on section 51(1) of the *Trade Practices Act 1974* within 30 days of the legislation being enacted.

Queensland is required to identify new legislation or provisions in legislation which rely on section 51(1) and to confirm the ACCC has been notified accordingly.

7.2 Trade Practices Exemptions

Queensland has not passed any legislation relying on the section 51(1) exemption during 2002.

PART 3 – AGREEMENT TO IMPLEMENT THE NATIONAL COMPETITION POLICY AND RELATED REFORMS

8. ELECTRICITY REFORMS

In its 2002 assessment, the NCC found that Queensland had made substantial progress with electricity reform and had met all its obligations under the national electricity reform agreements for the purposes of the 2002 assessment except in relation to the introduction of FRC for electricity.

8.1 Full Retail Contestability for Electricity

The NCC is seeking a report on the response of the National Electricity Market (NEM) jurisdictions to Queensland's request that its obligation to introduce full retail contestability (FRC) for electricity be waived and Queensland's approach following those responses.

The Queensland Government is committed to promoting a competitive national electricity market. That commitment is embodied in the *Electricity – National Scheme (Queensland) Act 1997*, intended to promote a competitive national electricity market. When agreeing to the NCP package of electricity and other reforms in 1995, it was understood that the impact of reforms would be differential across geographical regions, industries and individuals. For this reason, reforms have been linked to public benefit tests to ensure that the reform is in the community's interest. Indeed, the Queensland Government has adopted the approach that competition reforms should first be subjected to a cost/benefit evaluation to assess the community impact of introduction of reform prior to implementation.

In this context, the Queensland Government decided that a cost/benefit review on the introduction of FRC should be undertaken prior to a decision to introduce contestability to small electricity users.

This independent cost/benefit analysis indicated that for smaller customers and regional customers there would be limited benefits and substantial costs associated with the introduction of retail competition, mostly due to Queensland's high network costs that arise from the State's unique geographical position of having the largest and most diverse electricity network in Australia. Based on the analysis, the Government deferred the introduction of FRC. An undertaking has been provided however to review this decision in 2004.

While the introduction of FRC in Queensland may not involve net benefits at this point in time, potentially there may be benefits in extending retail competition to a sub-group of customers who remain on regulated arrangements, where implementation costs are not as

prohibitive. Queensland's Office of Energy is currently undertaking an analysis of the costs and benefits of extending competition to more than 7,100 small business customers with an energy consumption of between 100MWh and 200MWh a year. The number of customers in this group is growing at a rate of up to 5% per annum and extending competition to these customers would be significantly increase the contestable retail market in Queensland.

While the Government has deferred supply choice for domestic electricity customers in Queensland, it has ensured that this policy is compatible with the efficient operation of the wholesale market, providing greater efficiency in delivering competitively priced, reliable and secure electricity supply to Queensland consumers.

In its 2002 Assessment the NCC argued that the outcome of Queensland's benefit/cost assessment of FRC was not compliant with the NCP electricity agreements. The NCC noted that "there is an opportunity for all governments to amend the electricity reform agreements before the 2003 NCP assessment," and that "Governments may choose to do this to relieve Queensland of obligations under the electricity agreements, having regard to Queensland's view that a net benefit has not been established for the introduction of full retail contestability."

The Premier of Queensland has subsequently written to his counterparts in New South Wales (NSW) and Victoria regarding Queensland's FRC decision; seeking their support of an amendment to the electricity reform agreements to provide for the outcomes of the Queensland decision on FRC. In seeking such consideration the Premier noted that Queensland was not "looking for relief from ever introducing FRC" which "was made with the market information available at that time." The Premier also noted that it was the intention of Queensland to "undertake another cost benefit assessment in two to three years," (i.e. during 2004).

The Premiers of NSW and Victoria have both responded to the Queensland request. Both jurisdictions have indicated their agreement that only reforms which will provide a net benefit to the community should be implemented. Also both jurisdictions consider that an amendment to the existing electricity agreements "for such issues to be considered during assessment" is not necessary.

Queensland will be approaching the other relevant jurisdictions on a similar basis and will be able to advise the NCC of the views of all jurisdictions on this matter prior to the final 2003 assessment.

In the meantime, the Queensland Government continues to support the further development of a competitive market in electricity. Queensland is actively participating in the processes through the Ministerial Council on Energy and the NEM Ministers Forum to improve arrangements regarding NEM governance, transmission planning and regulation.

8.2 National Electricity Code Derogations

For the 2003 assessment, the NCC is seeking confirmation that all of Queensland's derogations to the National Electricity Code (Code) have expired. Queensland's remaining derogations in the Code date from commencement of the NEM and are largely technical in nature: either being consistent with those existing in other jurisdictions; or relating to

Queensland's specific network requirements. Queensland recently obtained an extension of two pre-existing derogations:

8.2.1 Forward Looking Loss Factors

The Code requires that wholesale electricity prices be adjusted to reflect losses in transmission. These loss factors are currently calculated using load and generation data from the previous financial year. Queensland derogated from the Code for calculating intra-regional loss factors. Queensland's derogation has allowed it to calculate loss factors on a forward looking basis, based on load and generation data predicted for the next financial year. This derogation was due to expire on 31 December 2002.

The application of forward looking loss factors across the NEM in a manner similar to that currently undertaken by Queensland was authorised by the Australian Competition and Consumer Commission (ACCC) on 3 October 2002. This methodology was intended to be implemented by 1 July 2003, however, NEMMCO has indicated that this may not allow it sufficient time for development of the methodology, including implementation of changes to systems, auditing and testing. Implementation has therefore been delayed until 1 January 2004.

Without an extension to the derogation, Queensland would have been required to revert to the use of backward looking loss factors for a limited time at considerable expense despite the process that is currently occurring to transition the rest of the NEM to the calculation of loss factors on a forward looking basis.

The ACCC has therefore authorised an extension of Queensland's derogation until the earliest of either the implementation of NEM-wide forward looking loss factors, or 31 December 2004.

8.2.2 Technical Derogations

Queensland has a number of technical derogations relating to Chapter 5 of the Code. These derogations were due to expire on 31 December 2002. The National Electricity Code Administrator (NECA) is currently undertaking a Review of the technical standards to which the derogations relate which is due for completion by mid-2003.

In the absence of an extension of these derogations, there was the risk that the Queensland network operators (Powerlink, Energex and Ergon Energy) would be unable to comply with the existing technical requirements of the Code. To ameliorate this risk, the network operators would need to undertake system upgrades which, depending on the outcome of NECA's Review, might prove to be superfluous.

The original basis for the current technical derogations was the acceptance that public benefit lay in protecting certain Code participants from the effects of likely breach of the Code, at a time when the electricity entities (and jurisdictions) were in transition between isolation and full participation in the NEM.

Since that time, Queensland has become a full participant in the NEM, yet a transitional state continues to exist to the extent that there can be no long-term certainty of any need for system upgrades to comply with the technical standards, until such point in time as

NECA completes its Review and the ACCC considers and determines Code changes accordingly.

If the derogations had not been extended, the Queensland network entities risked breaching current technical standards and upgrading the network unnecessarily to meet superseded Code requirements. There was a demonstrable public benefit in avoiding the above outcomes and there is no evidence the current derogations have in any material way detracted from effective operation of an efficient and interconnected national market. This had been borne out by the need for review of the technical standards which are the subject of the derogations and the existence of similar technical derogations in all other NEM jurisdictions.

8.3 National Transmission Grid Interconnection

The NCC is seeking a report on the measures adopted to address concerns expressed in its 2001 and 2002 assessments that current NEM arrangements may impede effective inter-jurisdictional transmission network interconnection.

Queensland is committed to providing for strong inter-regional competition, including facilitating adequate interconnection, embracing national consistency and allowing for market entry and growth in the number of market participants. This was clearly evidenced by Queensland supporting early interconnection with NSW which resulted in the development of the Queensland-New South Wales Interconnect (QNI) which has the largest transfer capacity of all interconnectors in the NEM.

Queensland is participating with other relevant governments through the NEM Ministers' Forum, in a review of the framework for transmission, including the development of a truly national grid.

At its July 2002 meeting, the NEM Ministers Forum agreed to address proposals for the future development of transmission. The Forum is to consider issues including current regulatory arrangements in promoting efficient market outcomes and transmission pricing. In recognition of the importance of interconnection and its ability to alleviate regional supply and demand imbalances, the NEM Ministers Forum is also considering impediments to investment in interconnection.

Significant progress has been made in terms of identifying the key problem areas in the current framework for transmission planning and investment. In Queensland's view the key problem to solve are:

- the persistence of intra-regional constraints which can be mitigated by additional transmission investment;
- delays in planning and development of transmission and reducing the level of disputation which has arisen;
- achieving more effective trading across interconnectors; and
- making transmission service providers accountable for the impacts of their operation of the grid on market participants.

The NEM Ministers in consultation with market participants and NEM institutions have achieved a consensus on the criteria for evaluating an effective transmission framework

and have identified central policy issues that need to be addressed as part of the work program. They are expected to deliver a recommended framework for the future development of transmission by mid 2003. Queensland has and will continue to fully support this process.

8.4 Institutional arrangements

The NCC is seeking a report on the measures adopted to address concerns expressed in its 2001 and 2002 assessments in relation to the effectiveness of the NEM's institutional framework.

Queensland is supportive of, and is actively participating in, the examination of institutional arrangements through the concurrent processes being undertaken by the Ministerial Council on Energy (MCE) and the NEM Ministers' Forum.

These reform agendas are both aimed at introducing greater transparency in decision making and efficiencies into the institutional frameworks underpinning the market:

- the NEM Ministers' Forum is progressing changes to the National Electricity Law to introduce a formal and transparent policy oversight role for the NEM Ministers as well as investigating the case for achieving harmonisation of regulatory arrangements and reductions in compliance costs through the introduction of a single NEM regulator. Queensland has recently indicated that it is supportive of the establishment of a single NEM regulator which would incorporate economic regulation as well as the Code change process currently undertaken by NECA; and
- the MCE, through its Energy Market Development Working Group, is examining methods of ensuring that the institutional, regulatory and administrative arrangements for Australia's energy market support the achievement of CoAG's priority energy policy objectives.

Both the MCE and the NEM Ministers' Forum are due to report on the outcomes of their analysis and preferred institutional framework by mid 2003. Queensland remains committed to its participation in these processes in order to achieve the realisation of further benefits from energy market reform.

8.5 Parer Review

The NCC has requested that jurisdictions report on any reform proposals in the Parer Report and the NEM Minister Forum Review that have NCP implications.

Queensland views the Parer Review Report (Report) as an input into the debate on energy market reform but strongly opposes any view that the Report's recommendations should form a benchmark for the NCC's 2003 assessment. The Report made recommendations on a wide range of energy matters. The Commonwealth, States and Territories have established formal processes to consider these recommendations in the context of responding to broad energy market issues. The Ministerial Council on Energy and the NEM Ministers Forum are developing a response on key energy policy issues and will report to CoAG in mid 2003.

Queensland participated in the Energy Market Review (Review) process, both meeting with the Review Panel and providing submissions in response to the Issues Paper released in February 2002. Given the importance of the Review and the breadth of issues to be addressed, Queensland did express its disappointment regarding the Review's expedited timeframe, the fact that comment on the draft report was confined to matters of fact rather than policy and in particular, that factual errors raised in Queensland's submission to the Review Panel were not rectified in the final report. Queensland also disputes the estimation in the final report of the benefits that would result from implementation of the recommendations. This analysis is not methodologically robust.

In December 2002, the NCC has raised concerns regarding the recommendation emanating from the CoAG Energy Market Review, calling for the abolition of Queensland's Benchmark Price Agreement (BPA) on the grounds that it suppresses market signals and reduces contract availability. Queensland's response on this matter is provided below.

8.5.1 Queensland Benchmark Price Agreement

Queensland maintains that the Review's analysis of the BPA is simplistic and disregards the fact that the Queensland arrangements have no adverse impact on, and indeed encourage, a competitive wholesale market in Queensland. The Review's recommendation is inappropriate because it is based on:

- a misunderstanding of the distinction between the BPA and the Community Service Obligation (CSO) (refer to page 67, footnote 14); and
- a lack of understanding of the design of the BPA and its impacts on market participants.

Community Service Obligation

The Review Report discusses the CSO in the context of the BPA and does not recognise that the BPA is but a component of the broader CSO calculation. The CSO obligation arises because the Queensland Government has elected to provide a system of regulated tariffs for domestic and regional customers (franchise customers) in Queensland. The two Government-owned retailers, Ergon Energy and ENERGEX, purchase electricity from the wholesale market to supply franchise customers.

Queensland franchise customers are currently supplied electricity under uniform tariff (UT) arrangements. The UT arrangements provide for customers in the same customer class to pay the same per unit charge regardless of the customer's location. However, historically UT revenue has not been sufficient to cover the costs of supplying customers in remote areas of the State, resulting in a net CSO payment from the Government to the retailers. The CSO arrangement between Treasury and the franchised retailers is designed to overcome any potential shortfall in revenue associated with supplying franchise customers throughout Queensland. The CSO arrangement is also designed to ensure the franchise retailer operates in a competitively neutral environment.

The CSO is calculated as the difference between the revenue received from franchise customers and the retailer's costs associated with supplying electricity to franchise customers. Queensland Treasury receives from the retailers the revenue received from the franchise customers and in turn pays each retailer the costs of supplying franchise customers. The costs associated with franchise customers include energy purchase costs, network costs (transmission and distribution), ancillary services, NEMMCO pool fees, the costs of

renewable energy certificates and a retail margin. The UT can be considered as a "bundled" price to cover all these cost elements.

Design of the Agreement

The arrangement for the purchase of energy involves a commercial negotiation between Queensland Treasury and the retailers whereby Queensland Treasury compensates retailers for efficiently purchased contracts. As part of the commercial negotiation, Queensland Treasury conducts a benchmarking process.

The BPA sits outside the wholesale electricity market and has been put in place to ensure that Ergon Energy and ENERGEX purchase wholesale electricity to supply franchise customers on an efficient basis.

Both retailers are responsible for energy purchases on behalf of franchise customers and conduct this purchasing on a commercial basis. This arrangement is competitively neutral in that the retailer is permitted to contract with generators, irrespective of whether they are private or Government-owned. The BPA ensures that the actual purchasing and hedging of energy remains the responsibility of the retailers.

As part of the commercial negotiation, Queensland Treasury on behalf of the Queensland Government benchmarks contracts purchased by Ergon Energy and ENERGEX against publicly available quotes for contract cover; and contracts purchased on behalf of contestable customers to ensure the retailers' contracts are efficiently priced. The BPA also involves a financial risk sharing arrangement between Treasury and the retailers for any residual pool purchases and thereby places incentives on the retailers to efficiently manage pool price outcomes.

The Draft Report's statement (on page 67) that "…governments intervene to protect their commercial interests…" is not an accurate reflection of the Queensland BPA. The BPA enables generators to contract with government owned retailers in a neutral market environment. The BPA does not shield market participants from commercial risks.

9. GAS REFORMS

In its 2002 assessment, the NCC found that Queensland had made substantial progress with gas reform and had met all its obligations under the national gas reform agreements for the purposes of the 2002 assessment, except in relation to the introduction of FRC for gas. In particular Queensland had:

- implemented and applied the National Gas Access Code and associated legislation;
- removed significant barriers to national free and fair trade in gas;
- removed regulatory restrictions on the use of gas; and
- adopted uniform national pipeline construction standards.

9.1 Full Retail Contestability for Gas

The NCC considers that Queensland has not fully met its national gas reform obligations because it deferred the introduction of FRC for gas from 1 September 2001 to 1 January 2003 without the consent of all governments as required by the NCP gas reform agreements (all governments other than the Commonwealth approved the deferral). Therefore, as part of its 2003 assessment, the NCC is seeking confirmation that FRC for natural gas has been implemented in Queensland.

The Queensland Government is a signatory to the National Gas Pipelines Access Agreement 1997 and is committed to fostering the development of competitive natural gas markets characterised by access to all gas consumers and gas producers in all relevant jurisdictions.

Queensland amended the *Gas Act 1965* to provide for the introduction of contestability for gas for consumers connected to the distribution network who use 100 TJ a year or more as of 1 July 2001. The market rules for this tranche of contestability have been developed in consultation with industry and took effect in September 2002. Currently, contestable customers account for over 80% of the State's gas demand.

Consistent with its overall approach to the implementation of competition reform generally, the introduction of gas FRC in Queensland will be contingent on the Government's consideration of a cost-benefit analysis undertaken by independent consultants. A Government decision on this matter is anticipated by May 2003.

In addition, the Queensland Government has made significant progress in the drafting of the Gas Supply Bill which is currently expected to be introduced to Parliament by 1 July 2003. The major impact of this Bill in terms of FRC, is that it establishes the legislative framework for contestability in the gas market, which is consistent with the current contestability arrangements (for consumption exceeding 100TJ per annum) and prospective arrangements for the introduction of FRC.

10. WATER REFORMS

Consistent with the priorities agreed by CoAG Senior Officials in December 2001, the 2003 assessment is focusing on urban water pricing and cost recovery, institutional reform, intrastate trading arrangements, integrated catchment management and water quality reforms. The 2003 assessment will also consider government investment in new rural schemes, where relevant, outstanding environmental reforms on stressed river systems and consultation and education relating to the identified 2003 assessment issues.

As well as the specific issues for assessment in 2003, the NCC is seeking progress reports on rural full cost recovery, establishment of property rights and registry systems, the development of water management plans and interstate trading arrangements.

10.1 Urban Water Pricing

Queensland's overall approach to implementing CoAG water reforms for local government is based in the first instance on the *Local Government Act 1993*, which outlines reforms to be undertaken and considered by local governments with Type 1 and Type 2 business activities. There are 18 local governments with such businesses, which account for over 80% of water connections in Queensland.

Water reforms undertaken by the largest 18 local governments have been largely complete for some time. The frameworks to ensure full cost recovery and consumption based pricing are in place and these larger councils are now addressing the more complicated technical issues associated with ongoing compliance, monitoring of the reforms and achieving appropriate market rates of return on capital.

Councils outside the largest 18 local governments (the remaining 107 councils) are not legislatively required to implement CoAG water reforms, although the adoption of CoAG water pricing and tariff reforms is strongly encouraged through the voluntary Code of Competitive Conduct and the *Local Government NCP Financial Incentive Package* (FIP). The Queensland Government is firmly of the view the adoption of CoAG water reforms should be a decision of individual councils, taking account of the circumstances of their own communities and only where implementation of CoAG water reforms has a clear public benefit.

To assist the remaining 107 councils with their consideration of CoAG water reforms, the Government has implemented a number of training and support initiatives in conjunction with the Local Government Association of Queensland (LGAQ) and the Queensland Competition Authority (QCA). The major training and support initiative has been the Business Management Assistance Program (BMAP). This program was designed to assist smaller to medium local governments in progressing CoAG water and competitive neutrality reforms by developing their in-house capability to achieve reform progress.

10.1.1 Full Cost Recovery

Attachment 6 contains a complete list of water and sewerage charging arrangements for those local governments with greater than 1000 water connections. Attachment 7 provides a summary of the level to which the businesses in question have adopted full cost recovery, full cost pricing and investigated the existence of CSO and cross subsidies.

Attachment 7 further incorporates the returns on capital for each water business where available. The levels of returns are grouped into five separate bands:

No rate of return..... the council does not calculate a rate of return;

Target rate of return ..... the council has a target rate of return, but at this stage is not meeting it;

Positive rate of return..... the council has a target rate of return, but at this stage is not meeting it, however the currently achieved return is positive;

Achieves rate of return.... the council is meeting its rate of return, the rate is considered appropriate; and

Exceeds rate of return ..... the council is exceeding its target rate of return.

In last year's report, Queensland provided the NCC with the actual percentage figures for each business' rate of return (where available). This approach has not been followed this year, primarily because of the problems in defining an appropriate market rate of return as a benchmark for each business because of the wide variations in debt/equity structure and business size. Therefore for each business the QCA has calculated what it believes to be the appropriate rate of return based on the LGA, Local Government Finance Standard and the publication *Full Cost Pricing in Queensland Local Government*. The QCA has then given a rating to the business based on its calculation. These ratings should be more useful in assessing the performance of local government water businesses than previous approaches.

Additionally, throughout the following sections regarding full cost pricing (FCP), the following approach has been taken. For the purposes of determining the proportion of reform achieved, the QCA in its series of annual assessments considered a number of factors. These factors were:

- the recovery of direct costs;
- the recovery of indirect costs;
- the development of a method for allocating administrative and overhead costs;
- the valuation of assets via the deprival method;
- the adoption of an appropriate method of depreciation for assets;
- the appropriate treatment of contributed assets; and
- optimisation of the asset base.

The QCA has given a rating to each council based on how many of these elements are in place. The ratings are:

All..... 100% of the elements of FCP have been implemented;

Most ..... 75% or greater of the elements of FCP have been implemented;

Many .... 50% or greater of the elements of FCP have been implemented;

Some..... 25% or greater of the elements of FCP have been implemented; and

Not..... 0% or greater of the elements of FCP and/or the business is not yet achieving Full Cost Recovery.

Largest 18 Local Governments

All local governments within the largest 18 are achieving all elements of Full Cost Recovery with the exception of Bundaberg which is currently achieving most of the elements.

Greater than 5000 Water Connections (excluding largest 18)

Excluding the largest 18 local governments, eleven (11) local governments have over 5000 water connections. Their water and sewerage activities are not sufficiently large to be defined as Type 1 or Type 2 business activities under the *Local Government Act 1993*. Of these, all local governments except Beaudesert are now achieving full cost recovery. Last year's report indicated that only five of these councils were achieving full cost recovery.

When assessed by the QCA against the higher standard of reform of FCP:

- Redcliffe, Gladstone, Maryborough, Cooloola and Burdekin have successfully implemented "all" of the elements of FCP;
- Livingstone, Johnstone, Mount Isa and Warwick have implemented "most" of the elements of FCP; and
- Burnett has implemented "many" of the elements of FCP.

All local governments in this category, with the exception of Beaudesert, are achieving a positive rate of return that falls short of the determined appropriate market rate of return. Beaudesert has identified a target rate of return but is not yet meeting that target.

1000-5000 Water Connections

The number of local governments with between 1000 and 5000 water connections has dropped to 39 this year with two councils (Peak Downs and Herberton) revising their estimates of water connections to below 1000. In terms of full cost recovery:

- one (1) local government (Belyando) did not submit sufficient information to establish the level of full cost recovery achieved within its water business;
- four (4) local governments (Sarina, Broadsound, Banana and Bowen) are not achieving full cost recovery;
- the remaining thirty-four (34) local governments are achieving full cost recovery. When assessed by the QCA against the higher standard of reform of full cost pricing:
  - twelve (12) local governments have implemented "all" of the elements of FCP;
  - eight (8) local governments have implemented "most" of the elements of FCP;
  - seven (7) local governments have implemented "many" of the elements of FCP; and
  - 4 local governments have implemented "some" of the elements of FCP.

This represents a large improvement in the level of full cost recovery within local government water businesses. Much of this reform progress can be attributed to the success of BMAP.

In relation to assessing whether local government water businesses are achieving a market rate of return of capital:

- two (2) local governments did not provide sufficient information to calculate their return on capital;
- twenty-three (23) local governments have an appropriate target rate of return, are earning a positive return at present but are not yet achieving their target;
- nine (9) local governments have an appropriate target rate of return but at present are not yet achieving a positive return, and;
- five (5) local governments have not yet identified an appropriate target rate of return.

Urban Bulk Water Suppliers

The Gladstone Area Water Board and Mt Isa Water Board have the commercial autonomy to set their pricing policy in accordance with the principles outlined in the *Water Act 2000*. The principles are based on commercial pricing practices whereby revenue is required to cover all expenses (including depreciation) as well as provide for a rate of return on capital. The rate of return is based on the weighted average cost of capital for each entity.

10.1.2 Consumption Based Pricing

Largest 18 Local Governments

All of the 18 largest local governments have appropriately priced two-part tariffs in place with the following exceptions:

Townsville..... As previously reported, Townsville charges commercial and industrial users with a single volumetric charge. Residential users continue to pay $403 for a 776kl allowance, additional consumption in excess of the allowance is charged at $1.23/kl. The QCA has examined the second consultant's report on which Townsville based its decision not to implement a two-part tariff. The QCA has confirmed the consultant's findings that the introduction of a two part tariff for residential users would not be cost effective. A copy of the QCA review has been provided to the NCC;

Rockhampton.... Rockhampton charges commercial and industrial users through a two part tariff. Residential users continue to pay a flat charge of $472 a year. Rockhampton is currently in the process of metering all residential users. While previous cost-effectiveness reports indicated that a two part tariff would not be cost effective due to metering costs, the Council has embarked upon the metering program for non-financial reasons (fire safety and monitoring of appropriate network pressures being the predominant reasons). Whether Rockhampton introduces a two-part

tariff in the future will depend on its response to a new cost-effectiveness investigation in line with requirements under the *Local Government Act 1993*; and

Thuringowa Thuringowa is phasing out its water pricing pilot scheme whereby customers could choose to stay on the allowance / excess arrangement or choose to go on a two-part tariff. Council has indicated that the 2003/04 financial year will see all residential users move onto a two part tariff.

Greater than 5000 Water Connections (excluding largest 18)

Of the eleven (11) local governments with over 5000 water connections (excluding the largest 18):

- nine (9) local governments -- Redcliffe, Gladstone, Maryborough, Cooloola, Beaudesert, Livingstone, Warwick, Burnett and Burdekin – have two-part tariffs in place that conform with CoAG requirements. Livingstone has a small regional area that remains on a free allowance/excess regime on the basis that this small geographical area is not cost effective to meter;

- Mount Isa had previously completed a two-part tariff report which found that the implementation of a two-part tariff was not cost effective. As a result, the council has resolved not to implement a two-part tariff; and

- Johnstone has resolved not to implement a two-part tariff.

1000-5000 Water Connections

Of the 39 local governments with between 1000 and 5000 water connections:

- twenty-two (22) local governments have successfully implemented an effective two-part tariff;

- seventeen (17) local governments do not have a two-part tariff in place -- of these:

  – one (1) local government (Murgon) operates a Hybrid charging arrangement whereby industrial customers are on a two-part tariff, while other customers remain on an allowance/excess arrangement;

  – two (2) local governments (Atherton and Whitsunday) will implement a two-part tariff during 2003/04;

  – two (2) local governments (Broadsound and Sarina) have previously resolved to implement a two-part tariff and have yet to do so;

  – three (3) local governments (Douglas, Roma and Mount Morgan) are in the process of conducting two-part tariff cost effectiveness reports;

  – one (1) local government (Paroo) has not completed a two-part tariff cost effectiveness report and did not submit a return to the Department or the QCA this year; and

– the remaining eight (8) local governments have conducted cost effectiveness reports and have resolved that the introduction of a two-part tariff is not in the public interest.

Urban Bulk Water Suppliers

Gladstone Area Water Board and Mt Isa Water Board were established as commercialised entities on 1 October 2000. All contracts in place at that time, including some take-or-pay contracts, were and will continue to be honoured. The charging arrangements for new customer contracts, and replacements for existing contracts as they expire, are based on the principles of differential segment and consumption based charging (i.e. volumetric charging).

As outlined in Section 4.3, in September 2002, the QCA published the Final Report of its investigations into Gladstone Area Water Board's pricing practices. The Premier and the Treasurer are currently considering the Report's recommendations, including those related to proposed new volumetric charging arrangements.

10.1.3 Trade Waste Charging

The NCC has indicated it will assess the structure of trade waste charges, particularly for the largest 18 local governments, to confirm that they reflect pricing principles based on the level of service received by users.

Attachment 8 contains information on trade waste charging collected as part of the Local Government Comparative Information Report. The data indicates that almost all larger councils in urban and regional areas have put in place some form of trade waste charging regime. As indicated in last year's supplementary report to the NCC, smaller councils have not implemented trade waste charging where they lack any major generators of trade waste.

In relation to the data collected for the Comparative Information Report:

- twenty-two (22) local governments did not submit information returns;
- seventy-five (75) local governments indicated that they did not have a trade waste charging regime in place; and
- twenty-eight (28) local governments indicated that they had a trade waste charging regime in place. Of these, twenty-one (21) are considered to be large or very large councils as per the Australian Classification of Local Governments. The remaining seven (7) are predominately medium sized councils.

10.1.4 Community Service Obligations and Cross-subsidies

The *Local Government Act 1993* requires the largest 18 local governments with significant water and sewerage business activities to identify and publicly report any cross subsidies that exist between different classes of customers and to identify and publicly report any community service obligations (CSOs).

For the remaining 107 councils with water and sewerage businesses that are not considered significant (i.e. generate expenditure less than $8.6 million), the identification and reporting of CSOs and cross subsidies is not required under legislation. However, the local government NCP financial incentive package provides a financial incentive for the councils to undertake such an analysis.

Of the 11 local councils which have over 5000 water connections but are outside of the largest 18 local governments, ten have identified CSOs and three have completed appropriate cross subsidy reports that comply with the guidelines.

Within the 39 councils with between 1000 and 5000 water connections, 31 have identified CSOs and are appropriately reporting them while seven smaller councils have conducted compliant cross subsidy reports. This is a very significant improvement on last year's results where only eight councils had investigated CSOs and two had conducted a cross subsidy report.

Further details are contained within Attachment 7.

Attachment 9 contains specific data regarding the make up and cost of CSOs and cross subsidies within Queensland local governments. The data is drawn from the draft Local Government Comparative Information Report and is representative of the content that will be provided within this years report.

In relation to the transparent reporting of cross subsidies, many smaller councils have expressed concern at the difficulty in calculating their long run marginal cost of water. This has prevented them from identifying any cross subsidies within their water businesses.

The Government is aware of their concerns and is working in conjunction with the QCA and the LGAQ through BMAP to design, produce and distribute a simplified model for the calculation of long run marginal cost within smaller water businesses. It is anticipated that should this model be successful, a greater number of smaller councils will investigate cross subsidisation within their water businesses.

Urban Bulk Water Suppliers

At the time the Gladstone Area Water Board and Mt Isa Water Board were commercialised, both entities were required to identify and remove any cross subsidies. Due to the fully commercial nature of each of the respective businesses, no cross-subsidies have been identified.

10.1.5 Conclusion

BMAP has been highly successful in helping smaller to medium sized local governments achieve substantial progress in their CoAG water reform agenda. Over 90% of all water connections in Queensland are now subject to satisfactory price signalling via a two part tariff. A further 4.7% of connections are on some form of hybrid pricing arrangement[8], and the remaining 5.3% remain on free allowance/excess regimes.

[8] Hybrid referring to where some consumer groups are being charged on a consumption basis whilst others remain on a free allowance/excess regime within the same council jurisdiction.

Substantial improvements have occurred in the areas of identification of CSOs and the implementation of full cost recovery. Trade waste charging regimes are in place within the vast majority of larger councils and improvements are about to be made to the transparency of cross subsidy information through the widened scope and availability of the Local Government Comparative Information Report.

The Government has identified smaller councils' concerns with certain technical aspects of delivering cross subsidy reports and is taking action to assist in resolving the concerns.

10.2 Rural Pricing and Full Cost Recovery

10.2.1 Rural Water Price Paths

While full compliance with CoAG rural pricing and full cost recovery principles will be assessed in 2004, the NCC is seeking a report on progress by jurisdictions towards the implementation of CoAG obligations.

The present pricing arrangements reflect the 5-7 year price paths set by the Queensland Government in October 2000. The current price paths are designed to ensure the majority of irrigation schemes reach at least minimum financial viability by 2004/05.

Given that a new set of prices need to be in place by 2005, the government commenced a process of consultation and engagement with SunWater customers in mid-2002 to outline the range of issues that need to be considered in developing new prices. This pre-policy engagement process is called 'Talking Water Reform' and is based on meetings with customer councils in various schemes throughout the State including Maryborough, Biloela, Bundaberg, Emerald, Mackay, Proserpine, Ayr, Ipswich, Mundubbera, Mareeba and St George. Further visits are planned for 2003.

In 2002, outstanding price paths were finalised for the Bowen–Broken and Kelsey Creek schemes and the Pioneer Valley Water Board. Price paths for the Callide and Eden Bann Weir schemes remain outstanding. The hydrological nature of the Callide scheme is very difficult to model and until this modelling is done it is not possible to prepare a price path. Eden Bann Weir has a small number of customers and this price path is expected to be finalised in 2003.

10.2.2 Community Service Obligations

SunWater's annual Statement of Corporate Intent which is agreed each year with both shareholding Ministers – the Treasurer and Minister for Natural Resources and Mines – provides for any CSOs to be provided on a fully transparent basis. At present SunWater receives the following CSOs:

- a *Rural Water Subsidy* of $8.179M for 2002-03 which represents the difference between revenues based on the regulated water prices set by the Government and the ARMCANZ lower bound for irrigation schemes, based on efficient costs; and

- a *Regulatory Transition Payment* of $1.315M for 2002-03 to cover specific costs associated with transition to compliance with the *Water Act 2000*.

Any new CSOs must be the result of a specific directive from the Government and be assessed on a case-by-case basis in accordance with the Government's CSO Guidelines[9].

10.3 New Rural Schemes

To comply with the CoAG water reform obligations, all governments are required to ensure that investment in new rural infrastructure occurs only where the new infrastructure is shown to be both economically viable and ecologically sustainable. To ensure both requirements have been satisfied before a scheme proceeds, the NCC examines investments in water infrastructure in the assessment period that a government decides to proceed with the investment. The NCC's 2002 assessment identified several potential rural water schemes, which, if a decision to proceed is taken during 2002–03, will be considered in its 2003 assessment.

10.3.1 Burnett Water Infrastructure Project

The Burnett Water Infrastructure Project includes the Burnett River Dam (previously referred to as Paradise Dam), Eidsvold Weir, Barlil Weir, Jones Weir Raising and Ned Churchward (formerly Walla) Weir Raising.

In accordance with the *Water Infrastructure Development (Burnett Basin) Act 2001*, the State Government established a new state-owned company, Burnett Water Pty Ltd (BWPL), for the purposes of undertaking impact assessment work and subsequently making applications for necessary approvals and completing all other necessary activities to enable the construction and operation of proposed water infrastructure developments in the Burnett region. This included:

- during October 2001, BWPL finalised Environmental Impact Statements (EISs) relating to the Burnett River Dam, Eidsvold Weir and the Ned Churchward Weir raising;

- in late October 2001, the Coordinator-General finalised evaluation reports for the Burnett River Dam and Eidsvold Weir EISs. The Coordinator-General considered the beneficial and detrimental effects of the projects, as required by the *State Development and Public Works Organisation Act 1971*, and decided that these effects were adequately assessed within the EIS documents. He further determined that the detrimental impacts would be adequately addressed through the adoption of a series of recommended mitigation measures. Finalisation of the evaluation of the EIS for the Ned Churchward raising was deferred to allow further information to be collected and analysed in relation to some outstanding environmental concerns;

- in December 1998, in accordance with the relevant provisions of the *State Development and Public Works Organisation Act 1971*, the Queensland Department of Natural Resources commenced two Reviews of Environmental Factors (REF) to consider the likely environmental effects of the Jones Weir Stage 2 and Barlil weir proposals. These REFs were completed in mid-2001;

- following the above reviews of the proposed Burnett River Dam, Eidsvold Weir, Barlil Weir and Jones Weir Stage 2 projects, environmental approvals were sought

[9] *Community Service Obligations: A Policy Framework*, Queensland Treasury, March 1999.

from the Commonwealth Government during 2001 for these four elements Burnett water infrastructure proposal; and

- in late 2001/early 2002, the Commonwealth Minister for the Environment and Heritage approved the Burnett River Dam, Eidsvold Weir, Barlil Weir and Jones Weir Stage 2 under the relevant provisions of the *Environment Protection and Biodiversity Conservation Act 1999* (Commonwealth).

In 2002, the Government allocated $7 million under the Burnett Program of Actions to address long-standing whole of catchment environmental issues identified during the EIS process and to assist in finalising the evaluation of the Ned Churchward Raising EIS. The issues being addressed by the program include water quality, fish passage, rehabilitation of vegetation and the sustainability of lungfish and turtle populations (the turtle-related research component is of particular importance to the evaluation of the Ned Churchward Weir Raising). Although this research is being accorded a high priority, it is not clear when sufficient information will be available to finalise the evaluation of the Ned Churchward Weir Raising EIS.

As an interim measure, the Department of Natural Resources and Mines has reserved water for the Ned Churchward Raising in the recently released draft Resource Operations Plan to facilitate the implementation of the Ned Churchward Raising project, should the outstanding environmental issues be adequately resolved. This approach is in accordance with the Government's 2001 decision to amend the Burnett Water Resource Plan, and thereby provide for a future water allocation, on the basis of the hydrological modelling used to complete the Burnett River Dam EIS.

Ecological Sustainability

In addition to legislative requirements relating to EIS requirements, the environmental values of rivers in Queensland are primarily protected by the provisions in the *Water Act 2000* relating to the development and implementation of Water Resource Plans (WRP) and Resource Operations Plans (ROP). The Burnett WRP and recently released draft ROP have been developed based on substantial scientific evaluation, modelling, consultation within government and with infrastructure owners, project proponents, interested individuals and groups and input from expert consultants and advisers.

In 2001, the NCC examined the original 2000 Burnett WRP and found that it met CoAG commitments in providing water for the environment. The WRP was modified in 2001 to incorporate the impact of the proposed additional infrastructure. In its 2002 assessment, the NCC found that the modified 2001 WRP complies with CoAG commitments on the basis that it represents only minor changes from the original WRP. However, the NCC has indicated that the Burnett ROP will need to show in a transparent manner how it will achieve the general and ecological outcomes stated in the WRP to ensure ecologically sustainable outcomes will be realised.

Following the completion of the EIS, BWPL and its advisers undertook extensive additional hydrological modelling work to confirm that operational arrangements for the projects will comply with the requirements of the WRP. Following comprehensive scrutiny of this work by the Department of Natural Resources and Mines (DNRM), the Government incorporated the reservations for the proposed infrastructure in the draft ROP released for consultation in early December 2002. While the reservations were included, the available draft operational details were not included in the draft ROP (which will be

subordinate-legislation) to provide scope to optimise performance levels during the detailed design finalisation and the early construction phase.

The framework for the implementation of the Burnett Program of Actions has been designed to complement the BWPL's conservation strategies and the implementation of the WRP through the ROP. The highest priority actions within the Burnett program of Actions relate to ensuring lungfish and turtle population sustainability.

The development conditions that have been placed on BWPL through the EIS process and the Community Infrastructure Designation made by the Minister for State Development and gazetted on 18 October 2002, oblige BWPL to implement a comprehensive set of environmental measures to mitigate any adverse impacts of the dam and to ensure the sustainability of important animal and vegetation species. A net gain for conservation in relation to vegetation is one of the key conditions mandated by the relevant requirements arising from the EIS process.

An example of action towards the addressing the net gain requirement was the December 2002 expansion of the Goodnight Scrub National Park. The area of the National Park was increased by 340 hectares (i.e. new area of 395 hectares less 55 hectares being revoked to accommodate the dam).

In addition to this, BWPL is committed to:

- seeking to purchase further high value conservation land for addition to the conservation estate, with the target provision of an additional 110 ha of high-value conservation land from its land acquisition program;
- providing financial compensation to the Queensland Parks and Wildlife Service for the value of resources to be lost from the Resources Reserve associated with the National Park. This financial compensation will be used to expand the conservation estate; and
- retaining most of the revoked national park land in its present condition where it is vegetated. The area between the full supply level and Q100d (i.e. 1 in 100 year flood line with the dam in place) will continue to be available for wildlife use as an effective extension of the National Park.

Economic Viability

Assessment work by independent analysts and researchers such as PriceWaterhouseCoopers (PwC) confirms that regional water demand is clearly in excess of the new entitlements to be created by the Burnett Water Infrastructure Project and that these entitlements will be able to be sold and/or leased at price levels that address Council of Australian Government (CoAG) requirements. The CoAG requirements are specified in the *Guidelines for Financial and Economic Evaluation of New Water Infrastructure in Queensland 2000* (the Guidelines). These guidelines have previously been considered and approved by the National Competition Council.

The Department of State Development (DSD) commissioned PriceWaterhouseCoopers (PwC) to complete investigations and provide advice about water market issues related to the Burnett River Dam and associated weirs.

The PwC surveys, analysis and advice subsequently produced have provided the Government with a thorough understanding of the extent of demand for water in the region

and the capacity and willingness of potential water users to pay for water. As highlighted by the Coordinator-General in his evaluation of the Burnett River Dam EIS, it is vital that decisions to invest in the project are underpinned by thorough understanding of the likely revenues to be obtained from water sales that are required to offset capital and operating cost expenditures.

In the Coordinator-General's Evaluation Report on the Burnett River Dam, the Coordinator General stated that a decision to invest in a water project:

> *"will occur when the potential investors (public or private) have established to their satisfaction that appropriate rates of return will be achieved on their investment. Such a decision will require the investors to satisfy themselves on the market for water, which in turn will depend on assessments by the investors in agriculture and industry of the market prospects for their products."*

In commissioning independent advice from PwC, the Government considered that there were two broad information requirements in relation to public sector "investors satisfying themselves on the market for water". These were satisfactory professional analysis and conclusions in relation to:

- the prospects for Burnett primary producers and the key commodities produced by them; and
- the capacity and willingness of potential users to pay for new water allocations at prices that at least meet the minimum levels of cost recovery outlined in Government guidelines.

The first of these information requirements was addressed the by economic analysis commissioned by BWPL during and after the EIS process. The environmental impact assessment included an assessment of the regional economic impact and a cost–benefit analysis. The work was done by Network Economic Consulting Group, Professor John Mangan (Queensland University), and Alliance Economics. They concluded that the proposed Burnett projects are economically robust and provide net economic and social benefits.

During 2002, BWPL commissioned ACIL to independently examine the production increases estimated by NECG during the EIS process. ACIL was asked to provide its own assessment of the region's production resources and commodity market prospects. While the subsequent ACIL report discussed risks that could affect regional prospects (eg a failure by regional farmers to individually or collectively undertake suitable strategic planning), this is balanced by a strong emphasis on the region's demonstrated ability to adapt to market requirements and discussion of particular regional advantages in relation to securing future markets.

Following the completion of its assessment, ACIL considered that

> *"The key point about the NECG projected production increases is that they are not inconsistent with the track record for horticultural production in the region which in turn reflects market opportunities and the demonstrated capacity of producers to compete against suppliers in Australia as well as overseas. Indeed compared to the recent past they appear to be conservative"*

The advice received from PwC provides additional comfort in relation to both the first and second abovementioned information requirements by confirming that regional water demand is in excess of the new entitlements to be created by the Burnett Water Infrastructure Projects and that these entitlements will be able to be sold and/or leased at price levels that address CoAG requirements.

The PwC advice is presented in four reports as follows:

- *Investment Scenarios of the Burnett Basin Water Projects* – study 1*;*
- *Water Pricing Issues for the Burnett Basin, July 2002* – study 2*;*
- *Burnett Water Projects – Market Analysis* – study 3
- *October 2002 Burnett Water Projects – Pricing proposals 2002* – study 4;

Study 1 investigated the appropriateness of a Government role in the Project in accordance with the assessment methodology outlined in the Guidelines.

This involved assessing the economic growth prospects of the region relative to the rest of Queensland, with and without the water infrastructure proposals and comparing the dam and associated weir projects to alternatives ways of achieving Government employment and development objectives for the region. Study 1 also included a model used to produce an estimated community service obligation (CSO) requirement based on the price/demand information at the time. The estimates and associated sensitivity testing analysis have been accepted by Government as a basis for advancing the project.

Study 2 discussed issues considered as key to setting an efficient price, including the indicative cost of delivering water services, the structure of appropriate charges, the level of cost recovery that charges should support, and an efficient economic framework for establishing prices.

Study 3 provided information on the willingness and ability of irrigators to pay for new water services based on a comprehensive farm survey program and associated statistical analysis.

The ability to pay financial modelling reinforced the results of the willingness to pay surveys, suggesting that most types of irrigated farms have the capacity to pay significant up front amounts to purchase water entitlements (in addition to annual delivery charges). However, sugar cane farm analysis indicated an inability to purchase entitlements in a once-off payment, although these farms do have the capacity to pay significant annual amounts to lease water entitlements.

Key findings from the market analysis indicated:

- customers are prepared to pay significant up-front amounts to purchase water allocations, in excess of the minimum cost benchmark developed in accordance with the Guidelines;
- willingness and ability to pay profiles vary significantly across three sub-regions within the Burnett River Catchment;
- some customer classes (i.e. small sugar cane farms) are unlikely to have the financial capacity to pay to purchase water through a single up-front instalment.

Study 4 updates and brings the previous studies together, explores price setting procedures for the Burnett infrastructure projects and discusses potential CSO implications.

In study 4, PwC recommends that the final price setting procedure include and/or address the following nine elements and/or principles:

- establishing a 'pre-sale' process by tender prior to completion of the infrastructure, to provide a means of testing the market and creating revealed price signals to prospective customers;
- sale of high security water entitlements via a separate tender process;
- sale of medium security water entitlements via an auction process;
- single round auctioning of central and southern region allocations;
- staged auction process for the lower region;
- further investigations of mechanisms to support a form of 'instalment plan' for bidders to purchase entitlements through a series of annual payments;
- establishing a reserve price that at least meets the minimum cost recovery benchmark estimates developed in accordance with the Guidelines (having regard to ongoing delivery charges). Information in relation to the reserve price should not be released to the market, as this is likely to result in market prices gravitating towards this amount and failing to achieve the competitive benefits of a market mechanism;
- no pre-defined quantitative limit on the amount of water released during initial sales to avoid any possible inappropriate uses of market power by the project proponents; and
- no constraints in terms of land ownership or the purpose to which water will be used, as this will lead to constraints on the depth of the market.

In addition, it is the Government's intention that water marketing be undertaken by a commercial marketing organisation, to be appointed through a competitive process.

Conclusion

The economic viability and ecological sustainability of the Burnett River Dam and associated weirs in accordance with CoAG commitments have been clearly demonstrated through exhaustive assessment processes.

10.4 Institutional Reform

10.4.1 Performance Monitoring and Benchmarking

As part of the CoAG Water Reforms, the Queensland Government was required to arrange for:

- major metropolitan water service providers to participate in a National system of inter-agency performance comparison and benchmarking;
- extension of inter-agency performance comparison and benchmarking to other water service providers;
- relevant jurisdictions to support the collection and collation of the necessary information; and
- the analysis of the information collected and production of a water industry performance report on an annual basis.

The major urban water service providers already participated in a performance measurement system developed by WSAA. The major urban water service providers are defined as those organisations that supply water to greater than 50,000 assessments (properties). Queensland has had 3 participants in the past with a further 2 participants joining this year. WSAA's performance monitoring report is called WSAA*facts*.

SCARM established the NMU working group for a National performance monitoring and benchmarking system for the non-major urban sector. This working group defined the non-major urban water service providers as those organisations that supply water to greater than 10,000 assessments (properties) and less then 50,000 assessments (properties). Queensland's representative has chaired this group for 3 years and Queensland has 21 participants in this process. The AWA publishes the performance monitoring report for the NMU working group.

ANCID undertake performance monitoring and benchmarking for the major irrigation sector. Queensland has 3 participants in this process.

The Department of Local Government and Planning (DLGP) also publishes a comparative report which includes water and sewerage performance monitoring and benchmarking for all local governments in Queensland. The report, the *Local Government Comparative Statistics Volume*, is available on DLGP's web site at http://www1.dlgp.qld.gov.au/estore/local_govt/#lgs_comparative_info. Selected material from the comparative report is provided in various Attachments to this Report.

It is anticipated that all current participants in the respective reports will continue to participate in the performance monitoring programs.

10.4.2 Irrigation Scheme Management

In SunWater irrigation schemes, the primary avenue for local area input to the management of schemes is via Customer Councils. Twelve Customer Councils operated during 2002, with a new Council being formed in the Mareeba-Dimbulah water supply scheme. These councils continue to function as independent organisations controlling the content of

meetings including agenda items. Councils also control their own budget, the funding for which is provided by SunWater based on requests from councils.

Irrigators in two schemes have declined to form Customer Councils until pricing disputes with the Government are resolved. Pricing in these schemes is being investigated by the Queensland Competition Authority. Despite the disputes, the irrigators still work closely with SunWater through structured irrigators committees.

The following activities were undertaken with Customer Councils during 2002:

1. *Setting of Service Targets* -- Service targets for most schemes were finalised with Councils during the year. Customer Councils provided significant input into the aspects of service to be measured, as well as the appropriate service levels for each scheme. This is a fundamental input into the management of the scheme to ensure services are provided to meet customer needs. SunWater will commence measurement and reporting of performance to Councils from July 2003;

2. *Finalisation of scheme management arrangements* -- Services to customers rely upon orderly and efficient management arrangements such as water ordering, rain shutdowns and sharing of system capacity for delivery. SunWater worked with Customer Councils to revise past arrangements and document agreed procedures and rules for the future. This process has enabled Customer Councils to have a significant input in the way their schemes are managed on a day to day basis. These will be published and communicated to customers early in 2003;

3. *Development of drought management strategies* -- Several SunWater schemes have been experiencing extreme drought conditions. In these schemes, SunWater and Customer Councils have worked closely together to develop strategies to maximise the benefits from the limited supplies for customers;

4. *Finalisation of the review of standard contract terms* -- The standard contract review (referred to in the 2001 assessment) was concluded following a second round of consultation with Customer Councils. This resulted in further improvements to the standard contract;

5. *Scheme operational issues* -- Customer Councils took part in day-to-day scheme operational issues such as the timing of shutdowns for maintenance or weed control. SunWater also worked closely with Councils in developing proposals and submissions in relation to future water management under the proposed Resource Operations Plans administered by the Department of Natural Resources;

6. *Customer Charter* -- Customer Councils were involved in the development of SunWater's Customer Service Charter which outlines the principles for SunWater's relationship with its customers;

7. *Transparency of financial information* -- The information referred to in the 2001 assessment continued to be made available to customers and their Customer Council, including:

    - total costs as a percentage of efficient cost targets;
    - total revenue as a percentage of the price path targets;
    - benchmark proportion of costs between cost categories; and

- actual renewals expenditure versus the renewal annuity revenue collected;

This was summarised in a scheme annual report to all customers along with advice on scheme performance during the year;

8. *Council Chair meetings with the Board* -- Council chairs met throughout the year with the SunWater Board to discuss issues of significance, including:

   - water pricing, including the roles of SunWater and other agencies;
   - coordination of submissions to the resource regulator regarding draft water resource plans;
   - outcomes from customer satisfaction research; and
   - tariff structures for water prices; and

9. *Dedicated Facilitator* -- SunWater recently appointed a dedicated facilitator who operates at arms length to the water supply business to assist Councils in resolving issues with SunWater. This position, which was created initially on a temporary basis but is now a permanent role, reports directly to the CEO and Board on issues raised by Councils. This has proved successful in the past to ensure Council views and feedback is provided directly to the highest level in the organisation.

10.5 Water Allocation and Property Rights

While the NCC will assess progress with implementing property rights arrangements in 2004, it is seeking a progress report from all States and Territories on progress in converting existing allocations to new property rights systems and mechanisms for supporting property rights arrangements such as registry systems.

10.5.1 Converting Existing Allocations

The Water Resource Plans made under the *Water Act 2000* are subordinate legislation. The Act provides a process by which the plans are implemented and individual entitlements are converted to tradeable water allocations through an implementation plan known as Resource Operations Plan. Resource operations plans give practical effect to the water allocation security objectives and environmental flow objectives specified in the WRP. Once the resource operations plan is approved, existing water entitlements specified in the plan are converted to water allocations.

The draft Resource Operations Plans (ROPs) for the Fitzroy and Burnett Basins were released in December 2002. A list of progress in the development of water resource plans and resource operations plans is provided in Table 10.1 and Figure 10.1 (Section 10.6.3).

10.5.2 Registry Systems

The Water Allocations Register has been established, forms developed, and is operational as a consequence of the release of the draft resource operations plans. A number of specific issues in relation to existing securities have been addressed in establishing the registry systems.

Many banks information systems cannot identify where they hold securities over land to which water licences were attached. Banks keep names and real property descriptions, but the draft Resource Operations Plan provides schedules of people's existing licences to be converted to water allocations. A process has been established whereby the existing licensing database (which includes real property descriptions) is matched with real property descriptions on the land registry and searches done for banks on request.

The Act provides for a notice to be given to the Department of Natural Resources and Mines by people with existing interests (the notice can be given after publication of the draft Resource Operations Plan but it must be received before the conversion to a water allocation occurs). Notices need only be given if the existing interest holders intend to take action to record their interest on the water allocations register, after the relevant entitlement is converted to a water allocation. If a notice is given, and action is then taken by the interest holder to record their interest on the water allocations register within 40 business days after the water allocation is recorded on the register, the interest holder will maintain priority of its interest in accordance with priority rules set out in the Act.

10.6 Environmental Allocations

The NCC has indicated that in 2003 it will assess outstanding environmental issues in several jurisdictions. It will also provide a brief progress report on the development of environmental allocations against the ARMCANZ National Principles for the Provision of Water for Ecosystems.

For Queensland, the NCC has identified outstanding commitments in relation to the Condamine–Balonne water resource plan (WRP), the Fitzroy Basin resource operations plan (ROP), and the Burnett Basin ROP. The Condamine–Balonne water resource plan was identified by the NCC as a critical issue for assessment in 2002 on the basis that it had been assessed as Queensland's sole stressed river basin. The Fitzroy and Burnett ROPs are the first ROPs to be developed in Queensland to give effect to the environmental objectives of the water resource plans.

10.6.1 Condamine-Balonne River System

In July 2002, the Queensland Government commissioned an independent review of the science underpinning the assessment of the current and future ecological condition of the Condamine-Balonne River system. The review was undertaken by a Scientific Review Panel, which consisted of Professor Peter Cullen (Chairman), Professor Russell Mein and Dr Richard Marchant.

The NCC agreed to undertake a supplementary assessment in February 2003 based on Queensland's response to the scientific panel recommendations, public submissions, and the development of a final Condamine–Balonne WRP. This included an expectation that Queensland will have finalised the Condamine–Balonne WRP consistent with CoAG commitments and to have the associated ROP underway within an appropriate timeframe.

The Scientific Review Panel has completed its review. During the review, the Scientific Review Panel liaised with a Community Reference Group (CRP) to seek its opinions and additional information about the ecology, workings and management of the river system. In accordance with its Terms of Reference, the independent Scientific Review Panel has prepared a report summarising its findings about the key issues.

In response, the Queensland Government agreed to implement the Panel's recommendations in full, with the aim of releasing a new draft WRP as soon as possible. The Government has indicated that it expects (subject to advice from the CRP and meeting the community consultation requirements of the *Water Act 2000*):

- to be in a position to release a new draft WRP around the end of June 2003;
- to commence preparation of a draft ROP around the time of the release of the new draft WRP;
- the WRP to be finalised by December 2003; and
- the ROP to be finalised and implemented in the first half of 2004.

10.6.2 Fitzroy Basin and Burnett Basin ROPs

The NCC has indicated that the Fitzroy Basin ROP will be assessed against ARMCANZ principles 4 and 8. The Burnett Basin ROP will be assessed against principle 4 to ensure the ecological objectives set in the modified water resource plan will be met.

The draft ROPs for the Fitzroy and Burnett Basins were released in December 2002 which provide infrastructure operating rules, including environmental management rules to ensure compliance with their respective WRPs. This is in accordance with Principle 4 of ARMCANZ National Principles for the Provision of Water for Ecosystems.

The draft Fitzroy ROP details the implementation of the monitoring program in two stages. The first stage is a research project that will determine the most appropriate indicators to assist in assessing the effectiveness of the management strategies in achieving ecological outcomes. This project commenced in 2002 and will conclude in 2003.

The second stage will be a long-term monitoring program that will be designed following the review of the initial research project. The long-term monitoring project will commence in 2004. This approach is consistent with Principle 8 of ARMCANZ National Principles for the Provision of Water for Ecosystems.

10.6.3 Water Management Plans (WRPs and ROPs)

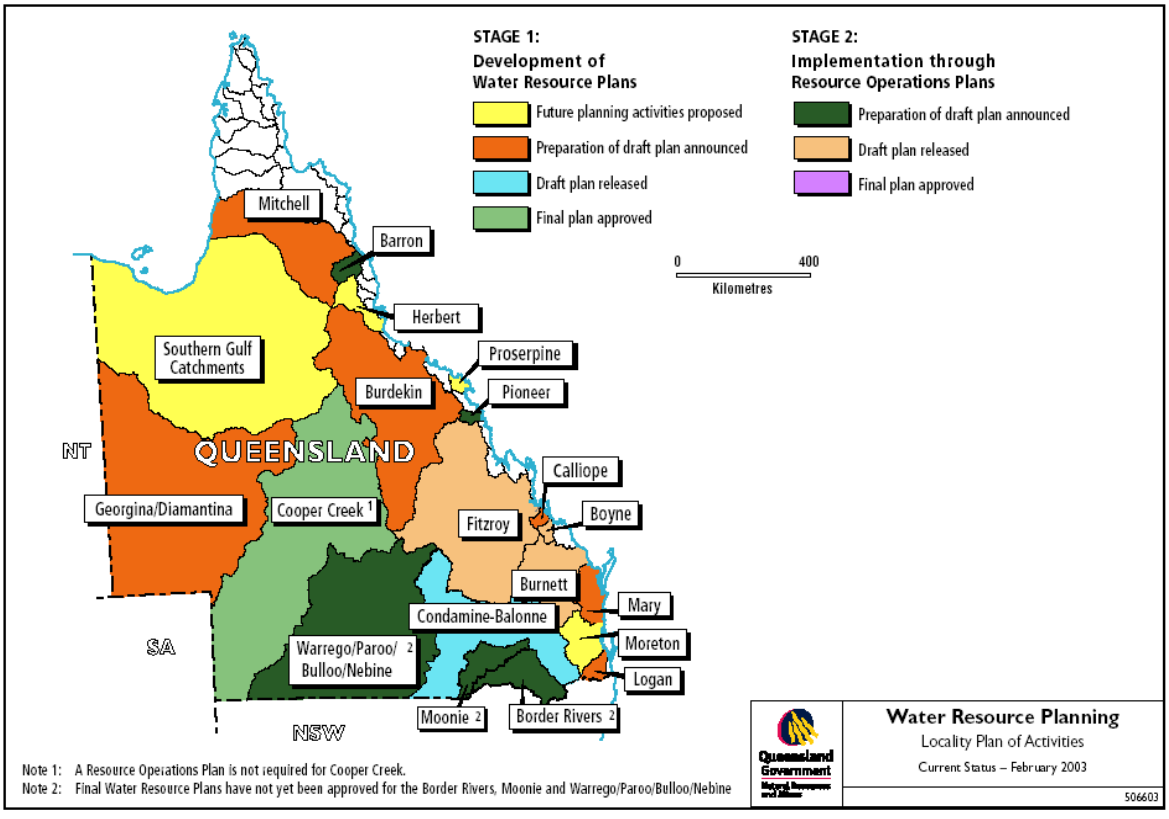
While the NCC will assess environmental allocations across all jurisdictions in 2004, for the 2003 assessment it is seeking for a progress report from all States and Territories that lists all draft and final water management plans, and explains the stage of development for plans in progress.

Progress in relation to the development of WRPs and ROPS for each of Queensland's catchments is shown in Table 10.1 and Figure 10.1.

Table 10.1: Water Resource Planning -- Status of Planning Activities (February 2003)

	STAGE 1 Development of Water Resource Plans (WRP)			STAGE 2 Implementation through Resource Operations Plans (ROP)		
Catchment	**Draft plan announced**	**Draft plan released**	**Final plan approved**	**Draft plan announced**	**Draft plan released**	**Final plan approved**
Barron	N/A	20 Dec 01	19 Dec 02	29 Jan 03		
Border Rivers	N/A	8 July 02	.	8 July 02		
Boyne	24 April 99	23 May 00	14 Dec 00	24 Mar 01	8 Dec 01	
Burdekin	17 Jan 02					
Burnett	N/A	26 June 00	14 Dec 00	20 Feb 02	2 Dec 02	
Calliope	24 April 99					
Condamine-Balonne	N/A	14 June 00				
Cooper Creek	N/A	17 Dec 99	7 Feb 00			
Fitzroy	N/A	3 Sept 98	23 Dec 99	23 Nov 00	2 Dec 02	
Georgina-Diamantina	21 Nov 01					
Logan	21 Nov 01					
Mary	20 May 02					
Mitchell	24 Feb 99					
Moonie	19 Nov 98	8 July 02		8 July 02		
Pioneer	N/A	8 Dec 01	20 Dec 02	29 Jan 03		
Warrego/Paroo/ Bulloo/Nebine	19 Nov 98	8 July 02	.	8 July 02		

Figure 10.1: Locality Plan



10.7 Trading Arrangements

Intrastate trading arrangements are being assessed by the NCC in 2003 against a common set of key criteria which are consistent with the findings of the High Level Steering Group on water "A National Approach to Water Trading". For the 2003 NCP assessment, the NCC is looking for information in a form that enables comparison of current arrangements with the environment at the time of the third tranche (2001) assessment.

10.7.1 Permanent water trading

Legislative and institutional arrangements and current trading rules and zones

Permanent water trading was initially trialled in the Mareeba Dimbulah Water Supply Scheme. Following an evaluation of this trial there were extensions to the trial both within Mareeba and to the lower Mary. The review document is at Attachment 10. The *Water Regulation 2003* (Qld) sets out the current interim permanent water trading rules. Permanent interim water trading is currently allowed in the Mareeba Dimbulah Water Supply Scheme (MDWSS), in lower parts of the Mary River Water Supply Scheme (Mary River - Mary Barrage Section; Tinanan Creek - Teddington Weir storage and Tinana Barrage storages) and is allowed for a small proportion of water allocated in the Nogoa McKenzie Water Supply Scheme. Water can only be traded for stock and domestic and primary production purposes and presently water cannot be permanently traded between catchments or between sectors other than these. With the completion of the Resource Operations Plans throughout the State permanent trading will be further extended to other regions in the state. The Resource Operation Plan for a particular catchment defines the rules for trading within that catchment.

Following the permanent water trading trial interim trading arrangements were extended within MDWSS through:

- the inclusion in the regulation of a sliding scale of fees for multiple licensed dealings in a single trade;
- the removal of the requirement for a 28 day advertising period of the proposed sale of the transfer;
- an evaluation of the land and water management plan administrative processes to test if they are an impediment to trade (the contrary was found);
- and a streamlining of the administrative process for approving a trade.

The value of permanent transfers of water have been in the order of $200/ML to $300/ML. Table 10.2 lists the number of applications and volumes of water permanently transferred in MDWSS since the trial's inception.

Table 10.2: Permanent transfers of water in MDWSS as at 20 February 2003

WATER YEAR*	NUMBER OF APPLICATIONS	VOLUME TRANSFERRED (ML)
1999/00	4	164
2000/01	9	275
2001/02	25	912
2002 - 20/2/2003	25	521
Outstanding applications	2	11
Total	**65**	**1883**
Withdrawn applications	3	152

*The water year for this scheme is from 1 July to 30 June.
Source: NR&M Mareeba Office register as at 22 February 2003.

The number of applications and total volumes traded may be compared with those on page 2 of the review of permanent trading[10]. In just over 13 months since the completion of the review there has been a 60% increase in the amount of water traded and a 91% increase in the number of permanent trades.

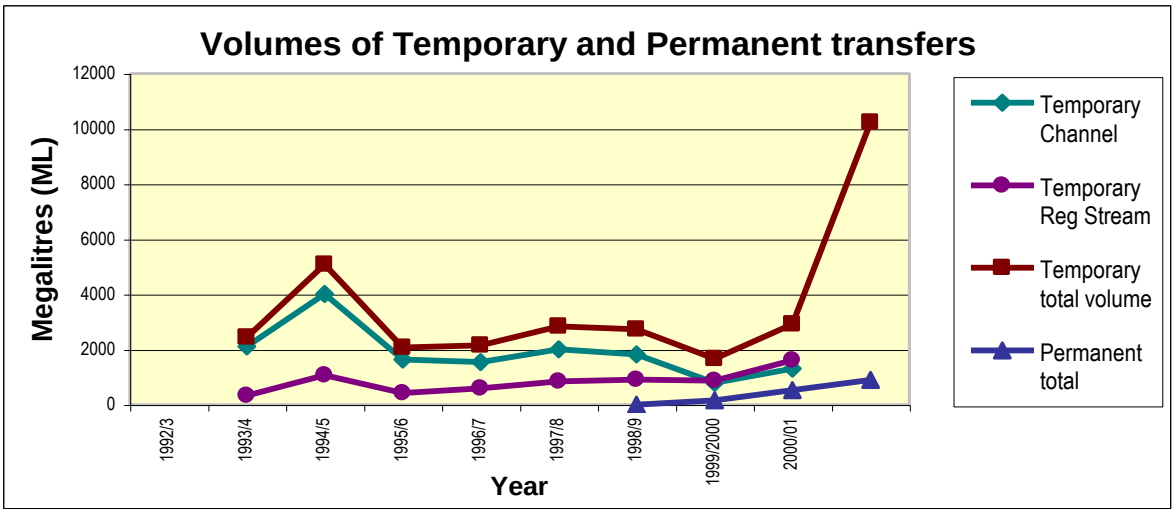
Table 10.3: Permanent transfers of water in MDWSS as at 9 January 2002

WATER YEAR*	NUMBER OF APPLICATIONS	VOLUME TRANSFERRED (ML)
1999/00	4	164
2000/01	9	330
2001 - 9/1/02	17	396
Outstanding applications	4	274
Total	**34**	**1164**
Withdrawn applications	3	152

*The water year for this scheme is from 1 July to 30 June.
Source: NR&M Mareeba Office register as at 8 March 2002.

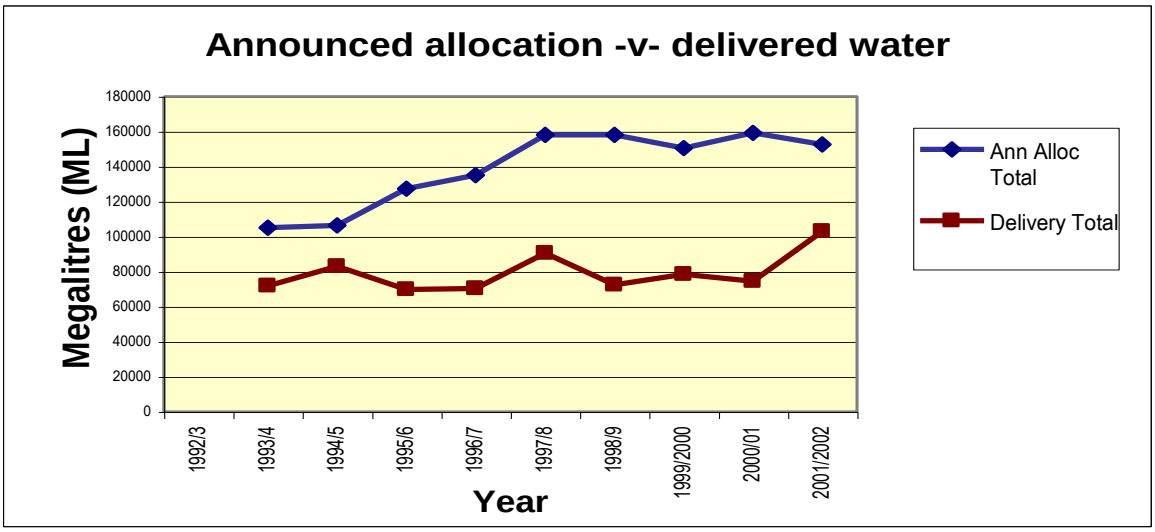
While permanent trades have grown in terms of volume traded, temporary transfers (seasonal water entitlements) have grown strongly over the period 2000/01 to 2001/02 as depicted in Figure 10.2.

Figure 10.2



[10] The discrepancy between the two tables for the water year 2000/2001 is due to the change-over of state water projects to SunWater and there was a different reporting mechanism for when the department registered the trade and when State Water Projects registered the trade. The reporting mechanisms of the two agencies are now aligned.

Figure 10.3



The increase in volume of permanent trades may be explained by reference to Figure 2 given on page 4 of the review document (Attachment 10). In 1994/5 there was a convergence of the amount of water allocated in the system (supply) and the amount delivered (demand) and this may be the reason why the temporary market volume increases substantially in 1994/5. Also the rainfall the years 1992/3, 1993/4 and 1994/5 were relatively 'dry' years. Similarly, the amount of water allocated and the amount delivered appears to have converged again in 2001/02 as can be seen in Figure 10.3**Figure** above. As can be seen in the rainfall chart (Figure 3 on page 4 of the review (Attachment 10)), 2000/01 and 2001/02 were relatively dry years which may indicate a pattern is emerging. This analysis provides some evidence that trading is allowing for the redistribution of water where and when it is needed most - during periods of increased scarcity (dry periods combined with reductions in allocations).

Table 10.4 summarises the number and volume of permanent trades from 2001 to 26 February 2003 for the Nogoa McKenzie catchment. Only a small proportion of total allocation may be permanently traded in the Nogoa McKenzie catchment. The nature of the trades has mainly been from agriculture to agriculture or stock and domestic use. One trade was for transfer from 'any' to industrial by SunWater. Outstanding applications are: 4 for cotton, 2 for horticulture and 1 for forage. There was one withdrawn application which was for a transfer prior to the sale of land, but the vendor did not provide the necessary documentation before the sale, so the transfer was withdrawn and application monies refunded.

Table 10.4: Permanent transfers in the Nogoa McKenzie Catchment

Water year	*No. of applications*	*Volume transferred (ML)*	*Priority*
2001 - 2002	7	702	Medium
2002 - 26 Feb 2003	1	17	Medium
Outstanding applications	6	594	Mainly Medium (1@181 ML High)
Total	**14**	**1313**	
Withdrawn applications	1	3ML	Medium

Source: NR&M Emerald Office as at 16 February 2003.

There has been 2ML permanently traded in the Lower Mary for use between stock and domestic use (medium priority).[11] There has been some inquiries in the Mary for the availability of permanent trades in the Upper Mary where there is greater water scarcity than compared with the Lower Mary.

Amelioration of adverse environmental impacts

Because permanent water trading is only allowed for surface water and only allowed for stock and domestic and agricultural purposes the extent of any adverse environmental effects will tend to be contained. Land and water management plans must be prepared for permanently traded water to be applied to a purpose.

Availability of market information, what and how much can be traded, availability of pricing information, where can be traded to and how it can be traded

Presently, SunWater and NR&M collect trade information. Amendments to the *Water Act 2000* and the *Valuation of Land Act 1944* currently being made will also allow for sales information including price paid, to be collected. This information will be publicly available. NR&M may enter into contracts to supply information in the form of bulk data or microfiche data.

Response on draft ROP's with respect to changing and transferring water allocations

ROPs set out rules for the transfer and change of a water allocation. Transfer of water allocation is a transfer of ownership without any change to the allocation itself. A change of water allocation involves a change to the nature of the water allocation itself rather than the ownership. The most likely change is one that changes the location at which the water allocation is taken. The ROP's may allow for intersectoral trading of water allocations eg. in the Draft Fitzroy ROP for the Dawson Valley Water Supply Scheme the purpose of the water may change between agriculture and any and vice versa. A change can not be made between catchments. There are restrictions on the amount, priority and zones of particular schemes within in which water may be traded. These restrictions typically relate to the physical constraints of the supply system and flows necessary to meet the supply and reliability of existing supplies.

10.8 Integrated Catchment Management

The NCC assessment framework states that a comprehensive integrated catchment management approach should be in place by June 2003. The NCC is seeking information to assess States and Territories progress in meeting this obligation.
CoAG

10.8.1 Overall Coordinating Body

In Queensland there are 14 autonomous community based NRM bodies, whose responsibilities include developing the catchment and regional NRM plans, and the subsequent implementation to achieve improvements in NRM and biodiversity at the landscape level. These 14 bodies are coordinated, through the Regional Group Collective.

[11] The value of the trade was $0/M: The orchard company involved simply wanted to shift some water around and save some money by not temporarily transferring the water.

They are supported at the regional level by four cross-agency Regional Coordination Groups which coordinate policy, and agency assistance.

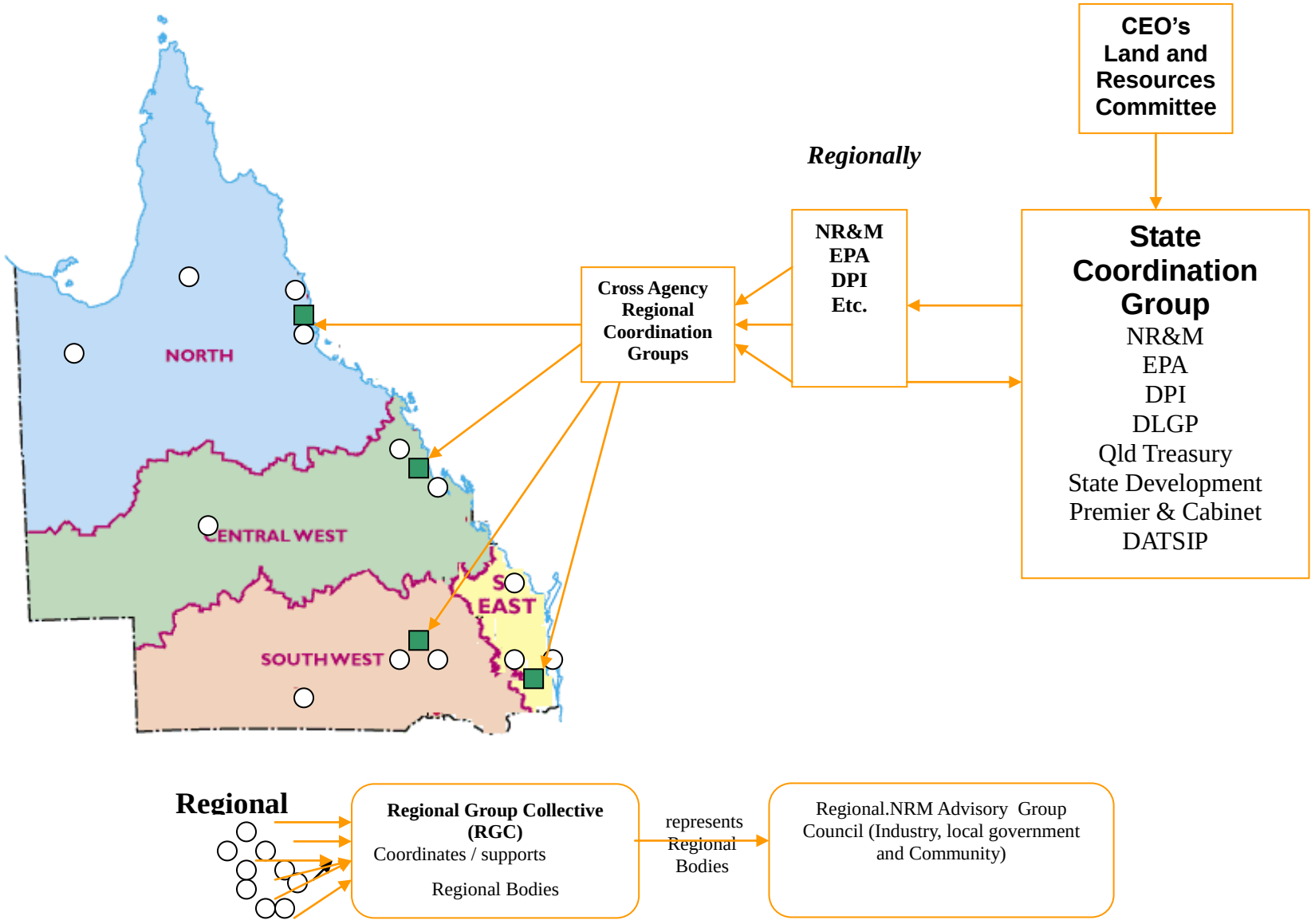
There is a State level Regional NRM Advisory Group which ensures state-wide industry and interest groups contribution to the 14 Regional NRM bodies and their planning processes. The Regional NRM Advisory Group works in partnership with the Queensland CEO's Land and Resources Committee to promote and support community involvement in the delivery of water and vegetation reform processes.

These coordination processes are shown in Figure 10.4.

The Queensland CEO's Land and Resources Committee also establishes whole of Government (WOG) mechanisms, at both the central office and regional levels, for the coordination of natural resource management. The Natural Resources and Mines Regional NRM Taskforce provides central level policy, planning and capacity building mechanisms. The taskforce has a series of WOG working groups, which coordinate and guide planning and implementation of natural resources management, including water quality management issues.

The WOG State Coordination Group (SCG), with representation from nine state agencies, oversees and advises on NAP and NHT2 arrangements in particular. Under NAP, state-wide salinity, water quality, socio-economic and capacity building initiatives are coordinated through Program Management Boards, such as the Water Quality Workplan Implementation Board which has academic, CSIRO, industry and government representation.

Figure 10.4


CEO's Land and Resources Committee
Regionally
NR&M
EPA
DPI
Etc.
Cross Agency Regional Coordination Groups
State Coordination Group
NR&M
EPA
DPI
DLGP
Qld Treasury
State Development
Premier & Cabinet
DATSIP
NORTH
CENTRAL WEST
S EAST
SOUTH WEST
Regional
Regional Group Collective (RGC)
Coordinates / supports
Regional Bodies
represents Regional Bodies
Regional.NRM Advisory Group Council (Industry, local government and Community)

10.8.2 Establishment of Catchment Management Bodies

The NCC is seeking a description of 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 Queensland/Commonwealth Joint Steering Committee (JSC) established under NAP/NHT2 programs now has the responsibility for 'designating' Regional Bodies, which codify NHT2/NAP institutional and operational requirements will develop and deliver integrated catchment management plans. These 14 Regional bodies will take over the previous processes under which up to 40 Catchment Committees were 'endorsed' by the State Minister after assessment and recommendation by the Catchment Management Coordinating Committee. (and subsequently LCMC). JSC designation processes require Regional bodies to meet certain criteria, following which the Bodies are "recognised" by the Commonwealth NHT Ministerial Board and the State Minister for Natural Resources and Mines. The CEO's Land and Resources Committee has recommended these revised procedures to Cabinet to officially mandate the process.

10.8.3 Statutory Catchment Management Plans

The NCC is seeking a description of the statutory basis of catchment management plans/strategies and capacity and mechanisms to enforce actions identified in the plans.

There is no statutory basis for implementation of integrated catchment in Queensland. A recent review of the need for a statutory basis for catchment management indicated that the current statutes covering vegetation, water and land use management (*Water Act 2000, Vegetation Management Act 1999, Land Act 1994, Environmental Protection Act 1997 1994* and *Integrated Planning Act 1997*) provide a more than adequate basis for enforcement under catchment plans in relation to activities which are deleterious to water quality management. Further, the recent CEOs Land and Resources Committee paper "Integrating regional planning for sustainable NRM" sets out a strong whole of government policy position and actions to improve outcomes from community-based planning. Regional NRM plans are is also able to achieve ICM outcomes through the WRP and Regional Vegetation Management Plan planning processes through which involvement of regional and catchment groups. in those planning processes

10.8.4 Evaluation and Review

The NCC is seeking a description of the framework used to assist catchment managers to evaluate/review the effectiveness of a catchment management process.

Beyond the extensive processes being established under the NAP arrangements, a number of other evaluation mechanisms are being developed. Queensland is progressing a State Monitoring, Evaluation and Reporting Framework which will address, among other issues, the effectiveness of natural resource planning and management which is conducted in by Regional Groups and Catchment Committees. A recent example is the Monitoring and Evaluation of On Ground Works for Healthy Waterways developed by the Brisbane City Council. Although the specific purpose was on ground activities in the Brisbane River and Moreton Bay Catchments, it was found the process had much wider application and is now being adopted for riverine and

riparian zone works in many other areas of the State, particularly in the Burdekin and Townsville regions as well as the Wet Tropics catchments flowing into the Great Barrier Reef lagoon.

10.8.5 Landcare Practices

The NCC is seeking a description of landcare practices (including extent of coverage) that protect areas of river that have a high environmental value.

A recent survey of "on ground implementation" groups (Landcare, Bushcare, Coastcare and Environmental) showed over 325 groups participating in 300 types of capacity building and on ground implementation activities with a cumulative participation of about 8000 persons. These activities are located in all regions of the State, but are more concentrated in the Queensland Murray-Darling catchments, the Moreton Bay Catchments and the Wet Tropics. Other focal points included the Fitzroy Basin, especially the Dee River, and parts of the Mackay Whitsunday coastline. Weed control activities are the most commonly reported activity, covering both weeds of production, especially perennial woody weeds as well as environmental weeds and weeds of wetlands. The next most frequently reported activity is tree planting, mostly in riparian zones to protect riverine ecosystems and water quality, and to a lesser extent for the enlargement of remnants to enhance critical habitats for endangered species or to create corridors between remnants and larger dedicated reserves. On farm nature conservation activity was reported particularly in the Queensland headwaters areas of the Murray-Darling Basin and the rangelands of the Burdekin basin. As this was a voluntary survey, the above information is a good representation of activity but probably under reports the actual extent of 'landcare' practices in the State

10.9 Water Quality

In February 2001, the NCC released a discussion paper, *'Implementing the National Water Quality Management Strategy' (NWQMS)* as a guide to the assessment of governments' compliance with CoAG obligations in relation to water quality. By the 2003 assessment, the NCC expects State and Territory governments to have largely implemented the NWQMS by the application of a broad water quality management framework. Therefore, in its 2003 assessment, the NCC will be seeking information on:

- the extent to which the State and Territory governments have processes, instruments or mechanisms in place to implement the key elements of the NWQMS;

- the extent to which these processes, instruments or mechanisms have been or are being employed consistently and systematically within each State and Territory; and

- the timeframes proposed for implementation of these key elements.

In the 2001 NCP assessment, the NCC found Queensland was implementing policies that support the objectives of the NWQMS. For the 2003 assessment, the NCC is seeking a report from Queensland on:

- the use of water use plans to control any adverse impacts for water quality that arise from new allocations (the *Water Act 2000* requires water use plans to be prepared when there is a risk of land and water degradation in an area); and

- water quality monitoring mechanisms, in order to address the Council's 2001 finding that there was insufficient water quality data relating to some river basins in Queensland.

The Queensland Government has developed, or is continuing to develop, a number of key instruments to apply the NQWMS to ensure protection of its waterways.

10.9.1 The Environmental Protection (Water) Policy 1997

This environmental protection policy adopts the approach of the *NWQMS* in establishing the environmental values (EVs) of waterways for protection. Any waterway for which EVs have been established can be listed in Schedule 1 of the policy. The policy also specifies 'default' EVs. The EVs provide: direction to Administering Authorities under the EP Act in their regulation of 'environmentally relevant activities' (ERAs); direction to those required to develop management plans; and general direction for other land and water resource use planning activities. Local Governments are required to prepare management plans on various matters affecting water quality including: wastewater; stormwater; and trade wastes. The EPP also specifically prohibits the discharge of certain water quality threatening substances (mainly wastes).

To assist Local Governments in their obligation under the EPP, the State has prepared model urban stormwater quality management plans and guidelines. The EP Act also provides for the Minister to approve Codes of Practice as a means of meeting general environmental duty. Several have been approved in relation to various agricultural industries.

10.9.2 Environmental Values

A methodology to establish the Environmental Values of Waterways, using the methodology proposed in the NWQMS, is being developed as the basis on which water quality management can be progressed. To date a trial has been undertaken to develop preliminary EVs for the Condamine-Balonne river system, and this work has been further progressed, through the development of preliminary EVs for the river systems flowing to Moreton Bay (the South East Queensland Regional Water Quality Management Strategy), and in the case of Trinity Inlet (Cairns). The methodology is being further refined in the Mary River catchment to ensure complementarity with the Water Resource Planning process, and has potential application to Regional Natural Resources Management planning process being undertaken through the NAP and NHT2. The need to establish environmental values for waterways is being written into the guidelines for the development of the Regional NRM Plans.

The principles and frameworks advocated in the NQWMS to the evaluation of licensed discharges to waterways are being applied. Queensland is working with NSW and Victoria to develop guidelines for Industry and Assessment officers, and developing decision support tools to ensure consistent and transparent decision-making.

10.9.3 Water Quality Monitoring

The high variability of river flows in Queensland, and the varying purposes to which water quality information is to be put, has led to the realisation that general ambient water quality information is of limited value. Water quality monitoring programs need to be targeted and focus more on flow events. Also, in line with the *Australian Water Quality Guidelines*, monitoring is being extended to include river biota. The development of a consolidated measure, similar to Victoria's 'Index of Stream Condition' (ISC) is being investigated.

The adequacy of the State's water quality monitoring arrangements to meet current and future information and assessment needs for Queensland's waterways is being reviewed. This also aims to ensure that the scope of indicators, and their spatial and temporal coverage enables the adequate description of the condition of waterways. A tender is about to be let to review these needs. Under the current timetable, a preliminary review and scoping is anticipated to be completed by June 2003.

The Environmental Protection Agency has primary responsibility for monitoring and assessing the water quality of estuarine and near-coastal waters, while the Department of Natural Resources and Mines has primary responsibility for freshwaters. As input to the review, the EPA is currently finalising a review of its water quality information (1992-2001).

Based on the information needs defined, the government will seek where appropriate, to develop regional, issues-based, partnership arrangements for monitoring with stakeholders that might include local government, regional NRM groups, industry, universities and local governments. An example of this is the Moreton Bay *Environmental Health Monitoring Program (EHMP)* under implementation of the South East Queensland Regional Water Quality Management Strategy.

The Moreton Bay EHMP is perhaps the best example of an effective waterway monitoring program in Queensland, encompassing marine, estuarine and freshwaters from Noosa to the NSW border, and using a range of novel monitoring and reporting techniques that more comprehensively report aquatic ecosystem health and link clearly to management outcomes and community engagement.

The trial of the Sustainable Rivers Audit of the Murray-Darling Basin Commission is being actively pursued in some of the Basin's rivers in Queensland. The audit is being developed to overcome the lack of consistent and detailed information on the health of the rivers of the Basin. It recognises that biota (fish and macroinvertebrates) and biological processes are the fundamental measures of river health and has developed indices for these. The Audit is being designed to be an annual and comprehensive five-yearly review of the condition of waterways, to inform debate among the Basin community.

Water quality and river health data collected, and information generated, by State Agencies is made freely available in various publications and on websites. A regional information services framework is being developed as part of the Strategic Investment Projects under the National Action Plan for Salinity and Water Quality and NHT2 initiatives. The framework will support the management, distribution and access to natural resource management information, ensuring that all available State Agency

information, including that relating to water quality and river health, will be made available to Regional NRM Bodies in forms that will be useful to their NRM planning.

10.9.4 Australian Water Quality Guidelines

Ongoing development of indicators and indices of aquatic ecosystem health is a core activity being pursued in partnership with various research organisations. This is consistent with the direction provided by the *Australian Water Quality Guidelines* to extend traditional 'water quality assessment' on to 'river condition assessment'.

Ongoing work includes the development of *Queensland Water Quality Guidelines* which will provide regionally appropriate environmental objectives in place of the national trigger values. Ongoing data collection, particularly in near pristine waterways, is also being undertaken in order to set meaningful and robust environmental objectives.

10.9.5. South East Queensland Regional Water Quality Management Strategy

A major initiative in water quality management in Queensland has been the development and implementation of the *'The South East Queensland Regional Water Quality Management Strategy'*. This is a comprehensive, integrated water quality plan for South East Queensland waterways and catchments. It provides the framework for management actions that are workable, practical and affordable. The strategy has been developed in the light of the findings from detailed baseline monitoring and modelling of water quality indicators. It has established draft environmental values for waterways.

10.9.6 Great Barrier Reef Protection Plan

In August 2002 the State and Commonwealth Governments signed a Memorandum of Understanding on a joint approach to protecting the Great Barrier Reef from land-based pollution. The Great Barrier Reef Protection Plan has a goal to halt and reverse the decline in quality of water entering the Reef, within 10 years. The Plan will identify practical actions to improve water quality and reduce impacts on the Reef's marine environment. It will have a primary focus on diffuse sources. Many of the actions identified in the Plan will be implemented through the Regional Natural Resources Management Plans developed as part of the NAP on Salinity and Water Quality and the NHT2. In particular, water quality targets developed in these regional plans will be consistent with the approach of the *Australian Water Quality Guidelines* of the NWQMS.

The Trinity Inlet Waterways initiative, April 2002, is a strategy to integrate the core business activities of the key Agencies in the region – such as managing the Fish Habitat Area, the Marine Park, and managing Environmentally Relevant Activities. It is providing direction to local government planning.

10.9.7 Other Water Quality Management Initiatives

The State is funding research into water quality management for a wide range of purposes. For instance this includes research into the sustainability of lungfish and turtle populations in the Burnett River system. Another example is that, in partnership with the Consortium for Integrated Resource Management (CIRM) the State has prepared a scoping paper on prioritising research into inland aquatic ecosystems in Queensland. This is designed to inform and direct the State's research, monitoring and management efforts in relation to the health of its waterways.

Under the State's Water Resource Planning process a considerable amount of waterway condition assessment work and associated research is undertaken. Relevant comprehensive studies are currently being carried out in the Condamine and Fitzroy River catchments. An outcome of these studies will be a better quantitative understanding of the impact of changes in flow on river health. Outcomes from these studies will also form the basis of the implementation of more robust and relevant indicators to assess the ecological performance of the water resource planning processes. The bulk of these studies should be completed in late 2004.

As part of the National Action Plan for Salinity and Water Quality, additional research is planned to better quantify the link between other human impacts such as salinity, and river health.

10.9.8 Water Use Plans

To date, it has not been considered necessary to prepare Water Use Plans to address land and water degradation associated with water use. As water use practices are only one of a number of factors potentially contributing to adverse water quality impacts, Queensland's approach in addressing both salinity and water quality issues focuses on the development of regional salinity and water quality management strategies through community based Natural Resource Management Bodies. This approach follows the National Action Plan for Salinity and Water Quality. It is intended that Water Use Plans would be applied, as necessary, as one of a number of complementary measures under an approved regional strategy.

In addition to Water Use Plans, which potentially apply to both new and existing water users, the *Water Act 2000* requires that a Land and Water Management Plan be prepared for irrigation developments using new or additional water allocations. A Land and Water Management Plan describes how and where irrigation water supplies are to be used, and addresses issues of soil suitability, salinity, erosion, drainage, the suitability of irrigation techniques and the amount of water that may be applied. Other mechanisms to manage the impact of land use activities on water quality are being investigated – particularly under the Great Barrier Reef Protection Plan.

10.9.5 Drinking Water Quality

Queensland is reforming the management of drinking water quality across the State. A review of the Health Act 1937 is underway, with a new Public Health Bill due to be drafted by the end of 2003, with proclamation of the new Public Health Act expected in 2004. It is intended to introduce a requirement for public and private sector drinking water providers to prepare drinking water quality management plans which will be

based on the risk management framework of the NHMRC Australian Drinking Water Guidelines.

In the interim, Queensland Health, in consultation with local governments and the water industry, is developing notification guidelines outlining the circumstances where water providers are to notify Queensland Health of identified public health risks. The notification guidelines will eventually be incorporated into the drinking water quality management plans under the Act.

10.10 Education and Consultation

As part of its 2003 assessment, the NCC will consider education and consultation issues associated with specific reform areas due for assessment in 2003, including institutional reform, urban pricing reforms, intrastate trading arrangements, integrated catchment management and water quality commitments relating to the NWQMS.

10.10.1 Urban Water Reforms

The provision of extensive education and consultation to assist local governments and the community in the implementation of all competition-related reforms by local governments is a corner stone of the BMAP. Relevant details are provided in Section 6.1 above.

10.10.2 Water Management Plans

In Queensland, the *Water Act 2000* provides for all stakeholders to be consulted during the development of WRPs and ROPs. Specifically, section 51 of the Act requires that, on completion of a WRP, the Minister must prepare a report about the Plan, which is to include a summary of issues raised during the consultation process and how the issues have been addressed.

Following concerns raised by the NCC about the adequacy of information available to stakeholders from the draft WRP stage to the final Plan, the NCC is seeking information on the inclusion of additional information in the section 51 public consultation reports accompanying the final WRPs. The NCC considers that the final WRP should include background information on the Plan, a summary of the issues raised during public consultation, the implications of the Plan, and a discussion of those aspects that significantly differ from the publicly exhibited draft Plan.

In December 2002, the Minister completed WRPs for the Barron River (Cairns region) and the Pioneer Valley (Mackay region). The section 51 reports compiled by the Minister in relation to these two Plans are the first such reports to be produced since the NCC raised concerns regarding the adequacy of information relating to changes from a draft to a final water resource plan.

The Barron and Pioneer Section 51 consultation reports contain the following components:

- a record of consultation involved in developing the Plan;

- a summary of the issues raised during consultation and how they are addressed in the final Plan;
- an outline of the content of the Plan and its implications; and
- a summary of the differences between the draft Plan and the final Plan.

Both reports are available on the Department of Natural Resources and Mines' website.

10.10.3 Rural Water Pricing

The current price paths for supplemented water are to end in 2005. The Queensland Government has therefore put in place an extensive consultation program regarding water pricing issues, to inform future policy. The consultation has included the publication of background document *Talking Water Reform*, as well as officers from Treasury and NR&M travelling the State to meet with irrigator groups.

10.10.4 Integrated Catchment Management

As discussed under Integrated Catchment Management, new institutional arrangements for improved regional involvement in natural resource management are being put in place. The arrangements are in accordance with the specifications of the National Action Plan for Salinity and Water Quality. Regional bodies are now responsible for the development and implementation of natural resource management plans. Details of the institutional framework are provided in 10.8.1, 10.8.2 and figure 10.4.

11. ROAD TRANSPORT REFORMS

In its 2002 assessment, the NCC confirmed that by 30 June 2002, most jurisdictions, including Queensland, had completed all road transport reforms endorsed by CoAG. However, the NCC noted a number of industry concerns about issues outside the CoAG-endorsed road transport reform initiatives. These include issues related to: the progress of outstanding reforms; the scope of the reform initiatives; timing of implementation of reforms; the interim nature of some reforms; levels of remuneration to eligible drivers and owner-drivers; and the holding of licences concurrently from different jurisdictions. Responses to these concerns are provided below. Nevertheless, the Queensland Government considers that such issues are outside the current assessment framework and that the relevant Ministerial Council, the Australian Transport Council, should be solely responsible for determining the progress of any remaining reforms.

Implementation of Reforms

The pace of current road transport reforms is considerable when compared to reforms in other transport modes and many other industry sectors. Given the overall number of reforms implemented and the continuing commitment to the reform process, considerable progress has been, and will continue to be, made in the area of road transport reform.

Scope of Reform

Currently, heavy vehicle registration charges are the same for all jurisdictions, however, differing charges apply for light vehicles. Uniformity in heavy charges has removed incentives for vehicle owners to shop for the cheapest rates between jurisdictions. However, differences in charges and insurance regimes for light vehicles may result in some fleet owners shopping between jurisdictions for the best deal. Under Queensland legislation, a vehicle with a Queensland garage address must also be registered in this State. Queensland Transport has been actively enforcing this insisting that major fleet owners who operate in Queensland must also have a base fleet registered in this state.

Timing of Reforms

The National Road Transport Commission (NRTC) and jurisdictions, where possible, try to ensure that reform implementation dates are uniform. However this is not always possible due to local issues, for example, a jurisdiction's registration computer system may need upgrading before the reform can be implemented. It is therefore not always possible to have uniform implementation dates. If implementation dates were made uniform, the pace of reform would be considerably slower. Timelines would need to be longer as implementation would need to wait until all jurisdictions are in a position to comply.

Interim Nature of Some Reforms

An incremental approach is considered more appropriate to deal with inter-jurisdictional differences, such as infrastructure constraints and community concerns. In these situations, when conditions change additional reforms are often proposed.

Levels of remuneration to eligible drivers and owner-drivers

An inter-jurisdictional project team (with Western Australia acting as project leader) has been established to investigate this issue. It is a difficult issue given that it crosses three regulatory systems: workplace health and safety, transport regulation, and industrial relations.

Any regulatory intervention to control prices in the transport industry would require a Public Benefits Test to ensure that the National Competition Policy outcomes were satisfied.

Holding licences concurrently from different jurisdictions

It is illegal for a driver to hold multiple licences. In Queensland, a driver must surrender any other licence held in another jurisdiction when applying for a subsequent licence in this jurisdiction. This is further supported by the fact that interstate licence conversion is fee free in Queensland (the issue of fee free interstate licence conversion was raised by the NCC in its Third Tranche Assessment Framework (February 2003)).

The National Exchange of Vehicle and Driver Information (NEVDIS) system supports this requirement by allowing licensing authorities to quickly check the status of licence being held in another jurisdiction. Further, the NEVDIS system is continually being improved through the adoption of more uniform administrative processes between all jurisdictions. All jurisdictions excluding Tasmania and the ACT have introduced the NEVDIS system. Jointly these two jurisdictions represent only 5% of all licence holders.

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