Government of Western Australia

2005 PROGRESS REPORT

IMPLEMENTING NATIONAL COMPETITION POLICY AND RELATED REFORMS IN WESTERN AUSTRALIA

REPORT TO THE NATIONAL COMPETITION COUNCIL

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1 INTRODUCTION

This report provides a stock-take of Western Australia's progress in meeting agreed obligations under National Competition Policy (NCP) and Related Reforms. The Western Australian Government is in the final stages of implementing NCP reforms where reviews have established that they are in the public interest.

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

This report is written in response to the National Competition Council's (NCC's) detailed *Assessment Framework* for Western Australia's 2005 assessment (provided at Attachment 1).

2 LEGISLATION REVIEW

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

All reviews have been undertaken in accordance with the Competition Principles Agreement (CPA), Western Australia's Clause 5 Legislation Review Table and the State's *Public Interest Guidelines for Legislation Review* (2001).

Many reviews completed to date have recommended removing those restrictions on competition that are not in the public interest. Of equal importance, rigorous analysis has established that there are good public interest reasons for retaining many restrictions.

Legislation review issues raised in the NCC's 2005 *Assessment Framework* are addressed in this section.

2.1 OUTSTANDING HIGH PRIORITY LEGISLATION REVIEW AND REFORM MATTERS

2.1.1 Specific Deduction Penalties

This section discusses Western Australia's progress in relation to the following specific penalties, for failure to reform legislation, that were in place in 2004-05:

- a permanent deduction of 10% for non-compliance in respect of retail trading hours legislation (estimated at $7.7 million in 2004-05 and $7.9 million in 2005-06 if the deduction continues);
- a permanent deduction of 5% for non-compliance in respect of the regulation of liquor sales (estimated at $3.8 million in 2004-05 and $3.9 million in 2005-06 if the deduction continues); and
- a permanent deduction of 5% for non-compliance in respect of the marketing of potatoes (estimated at $3.8 million in 2004-05 and $3.9 million in 2005-06).

2.1.1.1 Retail Trading Hours

The Western Australian public have provided the NCC and the Western Australian Government with a clear decision on retail trading hours, following the outcome of the referendum held in conjunction with the State election on 26 February 2005.

In the referendum, 58 per cent of voters supported the 'No' case on the issue of extended weeknight trading and 61 per cent of voters supported the 'No' case on the issue of Sunday trading.

Western Australia's legislative review guidelines, which are based on the CPA, require that public consultation be a central feature of any review process. The Western Australian Government has previously rejected the recommendations of NCP reviews, and required further analysis of restrictions, if review conclusions were not informed by adequate public consultation.

The public referendum provides an accurate assessment of the public's preference on retail trading hours, by undoubtedly providing the greatest public participation in deciding the public interest of any legislation review ever held in Australia. It established, by a very significant majority, that Western Australians see it as in their interests not to further extend trading hours for retailers or allow them to open on Sundays.

Clause 5(1) of the CPA holds 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. Clause 5(9) of the CPA provides that a review of legislation under NCP should analyse the likely effect of any restrictions on competition and on the economy generally, and assess and balance the costs and benefits of those restrictions.

The recent referendum has fulfilled these clause 5 requirements, through the fullest possible achievement of public participation in the public interest assessment process.

The referendum process ensured that the public was well informed and able to participate without undue bias in the consultation process. Prior to the referendum, the Western Australian Electoral Commission prepared and published comprehensive arguments supporting the 'Yes' and 'No' cases for the two questions. In addition, both the 'Yes' and 'No' proponents presented their arguments on the economic and social effects of extended trading hours in the media, and wide public debate ensued.

In the referendum, the voting public was asked to assess separately whether the Western Australian community would benefit if general retail trading hours in the Perth metropolitan area were extended to allow trading until 9 pm on weeknights, and for 6 hours on Sundays. (The two questions are provided in full at Attachment 2.)

Given the wording of the referendum questions, and the education of voters in the lead up to the referendum, the referendum represented a proper public interest assessment of the current retail trading hours legislation and the alternative of reform. The voting public of the State were directly asked whether the Western Australian community would benefit from extended retail trading hours and a clear majority concluded that it would be contrary to the public interest to extend retail trading hours.

To conclude that this has not established the current trading hours regime as in the public interest, the NCC would have to make the assumption that it knows more about Western Australians' public interest than they do. Such an assumption is untenable, especially as the public was well informed on the issue being exposed to a lengthy campaign by both pro and anti reform lobbies and balanced information from the Western Australian Electoral Commission. As a consequence, Western Australia's payment deduction for retail trading hours should be removed, and payments reinstated in 2005-06.

Legislation to ensure the validity of the existing shopping hours arrangements will be introduced into Parliament in 2005.

2.1.1.2 Liquor Licensing

Proposed reforms to the *Liquor Licensing Act 1988* consistent with NCP principles were put on hold prior to the 2005 election when it became clear that the reforms would not gain the approval of the Legislative Council. The issues were subsequently included in the Terms of Reference for the Independent Review of the Liquor Licensing Act, which was recently concluded.

The Minister released the *Report of the Independent Review Committee* for public comment on 13 July 2005, with submissions closing on 26 August 2005. The report is available at http://www.rgl.wa.gov.au .

2.1.1.3 Marketing of Potatoes

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

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

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

- implement competitive neutrality for the PMC's export activities;
- improve the efficiency of the PMC's operations;

- introduce a more market oriented system of potato quality standards, to improve price signals to growers and satisfy the requirements of retailers and merchants; and

- remove incentives for high-yielding varieties and overproduction (and therefore the risks of environmental degradation), possibly by specifying production entitlement in tonnage rather than area.

The advisory group's recommendations were tabled in Parliament on 1 July 2004.

The supply controls will remain but recommended changes to the PMC's operations have been implemented and amendments to the Act are being developed. The Corporation no longer competes in the export market and its marketing promotion functions have been taken over by the Potato Producers' Committee under the *Agricultural Produce Commission Act 1988*.

2.1.2 Suspension Pool

The NCC's 2004 assessment resulted in Western Australia incurring a competition payments suspension of 15 per cent ($11.53 million) in 2004-05, for a number of outstanding legislation review items. This section documents Western Australia's progress in relation to these reviews (the information sought by the NCC for each matter in the suspension pool is provided at Attachment 1).

2.1.2.1 Agriculture

2.1.2.1.1 Agricultural and veterinary chemicals legislation

In line with other States, Western Australia's A*gricultural and Veterinary Chemicals (Western Australia) Act 1995* adopts by referral the national *Agricultural and Veterinary Chemical Act 1984*.

Changes that are being made to the Commonwealth legislation for the National Registration System will automatically flow on to the Western Australian legislation.

The Government in May 2005 increased the drafting priority allocated to the Agriculture Management Bill, in order to ensure the timely repeal of the:

- *Agricultural Produce (Chemical Residues) Act 1983,* which currently provides for the regulation or prevention of chemical residues in agricultural produce; and the use and disposal of agricultural produce in which chemical residues are present in excess of certain limits; and

- *Aerial Spraying Control Act 1966,* which regulates the spraying of agricultural chemicals from aircraft.

The *Veterinary Preparations and Animal Feeding Stuffs Act 1976* was amended in 2004 with the passage of the Veterinary Preparations and Animal Feeding Stuffs Amendment Bill 2003. The Bill gained assent on 8 December 2004 as Act number 76 of 2004.

The *Veterinary Chemical Control and Animal Feeding Stuffs Act 1976* now allows regulations to be made for the control of use of veterinary chemicals. These regulations are currently being drafted and are in line with nationally agreed controls. This Act will also be superseded by the proposed Agriculture Management Bill.

The Government hopes to introduce the Agriculture Management Bill into Parliament during the Spring session of 2005. Any remaining restrictions imposed under the new Act and Regulations will provide a net public benefit and be in line with national standards.

2.1.2.1.2 Grain Marketing Act 2002

An independent review into the benefits and costs to the State of the operations of the *Grain Marketing Act 2002* followed the Grain Licensing Authority's (GLA's) first season.

The RSM Bird Cameron "*Review of the Benefits and Costs of the Operations of the Grain Marketing Act 2002 And the Grain Licensing Authority*" report concluded that the current GLA operations, and the operations of the *Grain Marketing Act 2002*, are providing a net benefit to the State, in the order of $3.37 million for the 2003-04 season. The report also concluded that the GLA has made decisions about the granting of special export licences consistent with the requirements of the Act and Ministerial guidelines.

Following the Review's conclusion that the current GLA system was of benefit to the grain industry, the Minister for Agriculture announced on 30 June 2005 that no changes would be made to the Ministerial guidelines issued under the Act. Submissions received in response to the report substantiated the Review findings and subsequent discussions with stakeholders led the Minister to conclude there is no need to change the guidelines.

The Minister recognises that the GLA needs some discretionary powers when accessing each application and that the GLA operations need to maintain independence. The Minister also acknowledges that the GLA examines each application on its own merits before deciding on whether to issue or decline special export licences.

In the 2004-05 season (from July 2004 to 21 June 2005), the GLA issued a total of 10 licenses for the special export of prescribed grains, as follows:

- 401,000 tonnes of feed barley was approved for shipment to the Middle East. Currently only 165,500 tonnes has been shipped;

- 76,000 tonnes of canola were licensed for export to the Subcontinent, with 25,000 tonnes shipped so far; and

- 60,000 tonnes of lupins were licensed after appeal. No lupins have yet been shipped under this license.

Also during the 2004-05 season, the GLA declined licenses to ship a total of 360,000 tonnes of feed barley to the Middle East, 65,000 tonnes of malting barley to Asia and 50,000 tonnes of canola to the Subcontinent.

The Minister is keen to continue to ensure compliance of the GLA special export licence arrangements with NCP. However, the State remains committed to maintaining a single desk export market power for the benefit of the State. The *Grain Marketing Act 2002* ensures a much greater level of competition compared to other grain marketing arrangements such as the South Australian barley market and the *Wheat Marketing Act 1989* of the Commonwealth, which restricts the export of containers and bags (which Western Australia allows private traders to undertake) to the Australian Wheat Board (AWB) and gives the power of veto over bulk exports by private traders to the AWB.

2.1.2.1.3 Veterinary Surgeons

A proposal to amend the *Veterinary Surgeon's Act 1960* will soon be submitted to Cabinet, seeking approval to draft, with the intention that it be considered early in the Spring session of Parliament. The proposed amendments include the changes recommended by the NCP review of the Act, endorsed by Government in December 2001, including:

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

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

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

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

2.1.2.2 Fisheries

Detailed public interest arguments for retained restrictions in the rock lobster and pearling sectors were provided in Western Australia's *2004 Progress Report* to the NCC.

2.1.2.2.1 Rock Lobster

On the issue of rock lobster management, consultants Economic Research Associates are currently conducting the review of management options in the rock lobster industry. The economic modelling has been largely completed and the consultant's report will be finalised by August 2005. Discussion papers comparing input and output control management systems will be released to industry by October 2005.

The Executive Director of the Department of Fisheries has informed the Rock Lobster Industry Advisory Committee (RLIAC) that he will be writing to all rock lobster processors to inform them that it is his intention to recommend the removal of limits on the number of rock lobster processors unless the processors (through their representative body, the Western Rock Lobster Development Association), can demonstrate that there is a continuous public benefit in retaining the restriction.

2.1.2.2.2 Pearling

The development of drafting instructions for the new Pearling Management Bill is well advanced and a draft NCP "gatekeeping" review has been prepared addressing all restrictions contained in the drafting instructions. On the central issue of hatchery quota restrictions, the Pearling Industry Advisory Committee (PIAC) is finalising its hatchery policy review, which compares the benefits and costs associated with a deregulation option against a controlled growth option, which could involve the retention of hatchery limits but provide scope for additional allocations of hatchery quota. A decision is scheduled to occur before the current arrangements expire on 31 December 2005.

2.1.2.3 Transport

2.1.2.3.1 Maritime Bill and Western Australian Marine Act 1982 and related legislation

The Maritime Bill (drafting of which was completed in 1999) is to be reviewed and updated to meet current needs. The Department for Planning and Infrastructure has allocated resources to undertake the review of the Bill. However, the review is not expected to relate to NCP, which was considered at the time of initial drafting.

Since the drafting and passage of the new Maritime Bill has been delayed sufficiently to require a further review before drafting can be progressed, and in order to address the immediate concerns of the NCC about outstanding review

obligations, an NCP review of the existing maritime legislation will be commenced to specifically identify those matters requiring amendment in the public interest.

The legislation to be reviewed is the *Jetties Act 1926* and Regulations, *Lights (Navigation) Protection Act 1938*, *Marine and Harbours Act 1981* and Regulations, *Shipping and Pilotage Act 1976* and Regulations and *Western Australian Marine Act 1982* (including the *Western Australian Marine (Hire and Drive Vessels) Regulations 1983*).

The NCP review of the existing legislation is expected to be completed by September 2005, with any required amendments identified by the review to be considered for inclusion in the revised *Maritime Bill*.

2.1.2.3.2 Transport Coordination Act and Aviation Tenders

New competitively tendered regional aviation services are due to be operational on 1 January 2006. The tender was advertised on 13 April 2005 and closed on 17 June 2005. The evaluation panel has been established and is working towards a 5 August 2005 Tender Review Committee endorsement, with due diligence and transition periods planned for completion later in the year.

The Government endorsed the competition policy initiated amendments to the *Transport Coordination Act 1966* in June 2004 and these are currently being drafted with the expectation of completion by the end of 2005. The drafting priority has recently been raised, and policy issues other than competitive neutrality are in the process of being addressed in preparation for the drafting of amendments.

2.1.2.4 Health

2.1.2.4.1 Health Practitioner Legislation

Significant progress on implementing NCP-required amendments to the health practitioner legislation has been achieved as follows:

- In June 2005, the Government approved the printing and introduction to Parliament of an interim package of legislation, to amend the bulk of the health practitioner Acts in accordance with the recommendations of the *NCP Review of Western Australian Health Practitioner Legislation*.
  - The Osteopaths Bill 2005, Chiropractors Bill 2005, Physiotherapists Bill 2005, Occupational Therapists Bill 2005 and Podiatrists Bill 2005 were introduced and first read in the Legislative Assembly on 29 June 2005.
  - Drafting of the remaining bills repealing and replacing the *Dental Act 1939*, *Dental Prosthetists Act 1985, Optometrists Act 1940, Nurses Act 1992* and *Psychologists Registration Act 1976* is currently being finalised. These Bills are scheduled for introduction to Parliament in 2005.

- The Optical Dispensers Repeal Bill 2005 was introduced and second read in the Legislative Assembly on 18 May 2005. The Bill repeals the *Optical Dispensers Act 1966* and the *Optical Dispensers Regulations* and makes consequential amendments to other legislation, in accordance with the recommendations of the NCP review of the *Optical Dispensers Act 1966.* The review, endorsed by Government in 2004, concluded that it is not necessary to regulate optical dispensers as a means of protecting the public.

- The Dental Prosthetists Amendment Bill 2004, which enables dental prosthetists to construct and fit partial dentures in line with review recommendations, was introduced as a private members Bill but lapsed in the Legislative Assembly on 23 January 2005.

One recommendation of the *NCP Review of Western Australian Health Practitioner Legislation* is not being implemented in the above Bills. The Review recommended that current practice protection provisions should be removed from the legislation unless a narrower scope of protected practices, known as "core practices" for each profession, could be identified by mid 2004. The practices being assessed by the Core Practices Review include those of chiropractors, dental hygienists, dental prosthetists, dental therapists, dentists, medical practitioners, nurses, occupational therapists, optometrists, osteopaths, pharmacists, physiotherapists, podiatrists, and psychologists.

The Department of Health has established a Working Party and facilitated the finalisation of the Core Practices Review and preparation of a draft Report as required. However, there is still a great divergence of opinion and contention amongst the professions that will be affected by the recommendations arising from this Review. This position is reflected in the legislation in other States and Territories where not all jurisdictions have consequently adopted a Core Practices model.

Rather than delay the introduction of the health practitioner bills because of these issues, it is intended to consider them at a later stage of the review process and as a matter of priority after all bills subject to the review have been introduced into Parliament.

In the meantime, several important core practices issues will be dealt with and implemented via the above health practitioner Bills. For example:

- the licensing requirements for and definition of hypnosis will be removed from the psychologist's legislation as part of the proposed Psychologists Bill 2005; and

- the Occupational Therapists Bill will provide for title protection only for occupational therapists, with the broad practice definition being removed.

2.1.2.4.2 Medical Act

Drafting of the Medical Practitioners Registration Bill has commenced, with the Bill being broadly based on the template Osteopaths Bill 2005. The Bill is now likely to be introduced into Parliament in 2005.

The new Act will comply with competition policy principles and requirements. Consistent with the position adopted in other Australian jurisdictions:

- the current ownership restrictions provided for in the existing Act will be removed. The Board will have a limited role in overseeing the provision of medical services by entities owned by non-registrants;

- the Bill will prohibit advertising of medical services in a manner which offers a discount, gift or inducement to attract patients where the terms and conditions of such an offer are not outlined. Prescriptive controls on the form and content of advertising by medical practitioners will be discontinued.

The timing of the new legislation has been influenced by establishment of the State Administrative Tribunal (SAT) for Western Australia, as a key recommendation of the review of the Act was that disciplinary jurisdiction over doctors should be split between the Medical Board (which will retain responsibility for less serious matters) and an independent tribunal (which will hear and determine more serious matters). This split jurisdiction is consistent with the situation in a number of other States (eg NSW, Queensland) and is intended to ensure that more serious complaints are dealt with under a more formal process that is separate from the day-to-day regulation of medical practice.

The SAT, which will provide this higher-level tribunal in Western Australia, was established in 2005 via the *State Administrative Tribunal Act 2004*. Preparation of the Medical Practitioners Registration Bill will now proceed more rapidly. (Attachment 3 lists the occupations which have had their disciplinary proceedings and licensing review decisions reassigned to the SAT.)

2.1.2.4.3 Pharmacy Act

Amendments to the *Pharmacy Act 1964* largely in line with the recommendations of the *Final Report of the NCP Review of Pharmacy* (the Wilkinson Report), as modified by the Council of Australian Governments (COAG) Senior Officials, are currently being drafted.

The Bill is broadly based on the State's template Osteopaths Bill 2005 but differs in limited respects consistent with the recommendations of the COAG Senior Officials.

The amendments will:

- increase the number of pharmacies in which an individual pharmacist may have a pecuniary interest, from 2 to 4, with the same limit to apply to friendly societies; and

- allow existing friendly societies to continue to operate, and allow other friendly societies to enter the market.

The Bill will effectively implement the recommendations of the Wilkinson Report as amended by COAG Senior Officials, in all respects bar one. The proposed Bill does not implement Recommendation 4 of the national review process, to remove the cap on the number of pharmacies that individual pharmacists (or friendly societies) may own, or have an interest in. Instead the cap, currently set at two in Western Australia, will be raised to 4. This increased cap is to be reviewed in two years' time.

In November 2004, the Prime Minister wrote to Western Australia advising that the relaxation of ownership restrictions to allow pharmacists and friendly societies to own up to 4 pharmacies each would not attract competition payments deductions.

Importantly, the specific restrictions applying to friendly societies in Western Australia will be removed. Western Australia's Act currently "grandfathers" friendly societies, by restricting pharmacy ownership to those societies already registered and practising on 1 July 1965, and restricting society premises to those occupied on 1 July 1965. In implementing the review's recommendation that friendly societies be treated consistently with other pharmacies, the State is enacting a significant reform. The grandfathering restrictions on existing corporately-owned pharmacies will be retained.

The drafting priority allocated to the Pharmacists Bill 2005 was recently increased by the Government. The Bill is now likely to be introduced into Parliament in 2005.

2.1.2.4.4 Poisons Act

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

The Australian Health Ministers Advisory Council's (AHMAC's) final draft response to the Galbally Review was endorsed by the Australian Health Ministers Council (AHMC) in November 2003, and subsequently endorsed by COAG out of session during the latter part of 2004.

The Western Australian Government endorsed the drafting of the Poisons Amendment Bill, to amend the *Poisons Act 1964* in line with the recommendations of the national review, in April 2005. The Bill is now expected to be introduced to Parliament in 2005.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2.1.2.4.5 Health Act and Food Regulations

Cabinet has approved drafting of the Food Bill and the drafting priority was recently increased. The Bill is expected to be introduced to and passed through Parliament in the Spring session of 2005.

A discussion paper proposing a new Public Health Act is shortly to go to Cabinet, for approval for public consultation. The following Regulations are to be reviewed as part of the review of the *Health Act 1911*:

- Health (Asbestos) Regulations 1992
- Health (Cloth Materials) Regulations 1973
- Health (Construction Work) Regulations 1973
- Health (Pesticides) Regulations 1956
- Health (Pet Meat) Regulations 1990
- Health (Public Buildings) Regulations 1992
- Health Act (Swimming Pools) Regulations 1964
- Offensive Trades (Fees) Regulations 1976 (issued under Health Act 1911)

2.1.2.5 Legal Practices

2.1.2.5.1 Legal Practice Act 2003

The Joint National Working Party on the Legal Profession has yet to determine a national approach to professional indemnity insurance (PII). Due to the complexities of the PII issue, a subsidiary Joint Working Party on Professional Indemnity Insurance, comprising industry and government representatives, has been formed. This latter Joint Working Party is expected to report to the July 2005 meeting of the Standing Committee of Attorneys General (SCAG) and once the Government has this report it will be able to commence consultation with local stakeholders.

More recently however, a problem concerning the validity of the Legal Practice (Professional Indemnity Insurance) Regulations 1995 (the Regulations) emerged and resulted in these Regulations being amended. Legal Practice (Professional Indemnity Insurance) Amendment Regulations 2005 were approved by the Executive Council on 10 May 2005 and gazetted on that day. The background to the new regulations is as follows.

Under Regulation 6, the Legal Practice Board is empowered to refuse to issue an annual practice certificate to a legal practitioner if the Board is not satisfied that the practitioner has adequate PII. Certain practitioners, as specified in Regulation 11, are exempt from this requirement. These exempt practitioners

include, for example, barristers who hold insurance approved by the Western Australian Bar Association and government lawyers. Regulation 11 (g) had extended the categories of exempt practitioners to include "any other practitioner or class of practitioners whom the Law Society Council has resolved should be entitled to exemption." This has been removed.

PII for non-exempt practitioners is provided through Law Mutual, an arm of the Law Society of Western Australia. Law Mutual is not an insurer itself; instead, it negotiates with insurance brokers on behalf of the profession as a whole and practitioners pay a set contribution to Law Mutual.

The exemption process as specified in the Regulations requires the Law Society to assess a practitioner's or firm's eligibility for exemption and the adequacy of any alternative PII arrangements which may have been obtained. The Law Society then advises the Legal Practice Board of its assessment. Practitioners seeking an exemption are required, under Regulation 12, to apply to the Law Society by 15 May each year.

Fully integrated national legal firms which operate in Western Australia and have sourced their PII from elsewhere in Australia have been granted exemptions by the Law Society. Recently however, two large local firms sought to be exempted under regulation 11 (g) but the Law Society Council determined that an exemption should not be granted as the firms were not fully integrated national practices. This ruling was challenged and in examining this situation, legal opinion concluded that Regulation 11 (g) was *ultra vires* the Act, and that the Act did not permit the Law Society to be given this discretionary power. It was decided that instead the exemptions should only apply to stipulated categories of practitioners as set out in the Regulations.

To that end the Amendment Regulations removed the Law Society's discretion and prescribed that national partnerships and nationally incorporated legal practitioners, where their business is primarily conducted outside Western Australia and where the majority of their partners or directors are outside Western Australia, are exempt from the Law Mutual scheme.

This change in the Regulations is regarded as an interim measure so as to effectively maintain the status quo while further consideration is given to the PII system as a whole. The difficulty with Regulation 11 (g) being found *ultra vires* the Act has only become apparent. The 15 May deadline for applications for exemptions created a situation where the Government was required to act quickly to ensure that PII arrangements for the profession as a whole for 2005-06 were not jeopardised. The ultimate purpose of the PII requirements is to provide consumer protection for the clients of legal practitioners and firms, and the Government has a clear obligation to act so as to uphold these consumer protection measures.

The Amendment Regulations could be viewed as introducing a restriction on competition. However, it is considered that the net public benefit still outweighs the effect of restricted competition, and that by ensuring there is a viable PII scheme, the consumers of legal services in Western Australia are being given an appropriate level of protection.

The *State Administrative Tribunal Act 2004* and the *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* have both commenced with the SAT coming into operation on 1 January 2005. The disciplinary functions formerly exercised by the Legal Practitioners Disciplinary Tribunal have been taken over by the SAT (see Attachment 3).

The National Model Bill for the legal profession has not yet been settled. A number of outstanding matters remain, including professional indemnity insurance, and until these are resolved it would be premature for Western Australia to amend its legislation. Until the SCAG endorses a final version of the Bill and its associated subsidiary legislation, Western Australia will not have a firm base on which to legislate. Those jurisdictions which have been moving along the path of introducing the National Model Bill have encountered conceptual, policy and drafting problems with some aspects of the Bill as they prepare their own legislation. This has given rise to much reworking of the Bill, which is now underway, and is also an argument for Western Australia to wait and see how the Bill works in practice.

2.1.2.6 Occupational Licensing

The *State Administrative Tribunal Act 2004* was assented to on 23 November 2004, and the State Administrative Tribunal (SAT) was established on 1 January 2005 as an independent body that makes and reviews a range of administrative decisions.

Prior to the establishment of the SAT, occupational licensing boards in Western Australia exercised both regulatory and disciplinary functions, having authority to:

- licence people to carry on activities in designated professional, occupational and business areas;
- receive complaints about professional misconduct; and
- hear and determine the complaints, and impose disciplinary penalties.

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

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

With the establishment of the SAT, the disciplinary functions of occupational licensing boards were separated of from their regulatory functions. The boards remain responsible for registration/licensing, complaint handling and investigation. Existing boards retaining the following types of functions:

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

The SAT handles three types of vocational applications. It:

- hears disciplinary complaints brought by vocational bodies against members of the vocation or occupation;
- reviews decisions made by regulatory bodies regarding licences to operate in an occupation; and
- reviews decisions regarding fidelity and compensation funds.

A number of boards, tribunals and other bodies previously reviewed as requiring reform in line with NCP have had their jurisdiction to hear disciplinary matters taken over by the SAT. The SAT makes disciplinary decisions and reviews licensing decisions for the 36 occupations listed at Attachment 3.

2.1.2.6.1 Auction Sales Act

The NCP review of the *Auction Sales Act 1973* recommended that:

- the licensing system be retained until a full legislative review of the Act is completed;
- at that time, unless justified by the general review, the licensing system is to be repealed; and
- in the event of continued licensing, that the administration of such a system be the responsibility of a single Government organisation.

The general review of the Act has been completed, however, finalization was delayed pending receipt of the Commissioner of Police's advice as to the future administration of the Act. The review will shortly be provided to the Department of Treasury and Finance (DTF) for submission to the NCC.

The general review has reassessed the restrictions the Act imposes on competition and recommends the retention of the existing licensing requirements in the public interest.

2.1.2.6.2 Travel Agents Act

The only outstanding element of the national review (chaired by Western Australia) of the *Travel Agents Act 1985* and Regulations not yet implemented in the State, is the repeal of the licensing exemption currently awarded to the Crown.

The amendment is contained in the Consumer Protection Legislation Amendment and Repeal Bill 2004, which lapsed in the Legislative Assembly in January 2005 following introduction and second reading in August 2004.

In May 2005, the drafting and passage priority assigned to the Bill was increased. Essential consultation is being undertaken with key stakeholders on other provisions in the Bill. The Bill is expected to be available for introduction into Parliament in the Spring 2005 session.

Western Australia has discharged its obligations as convenor of the national working party on travel agents legislation, as implementation requirements were finalised in October 2004.

The only element of the national review outstanding was a recommendation that the Ministerial Council on Consumer Affairs (MCCA) direct the Travel Compensation Fund (TCF) to review its contribution arrangements for different types of travel agencies with a view to establishing a risk-based premium structure, and to review its prudential and reporting requirements with a view to making these more equitable.

In June 2004 the MCCA agreed to amend the NCP Working Party's terms of reference in relation to this matter and this issue is now the responsibility of a separate TCF Working Party. On this basis the NCP Working Party has completed its terms of reference.

2.1.2.6.3 Settlement Agents Act

The final report of the NCP review of the *Settlement Agents Act 1981* was completed in March 2002, and endorsed by the Government in May 2002. Eight of the 33 review recommendations recommended retention of the status quo.

The review found that the requirement for settlement agents to be licensed should be retained in the public interest because the benefits of reduced risk of financial loss and increased consumer confidence outweighed the costs associated with reduced competition.

The review also recommended replacing provisions regarding the financial resources of agents with provisions preventing insolvent persons holding a licence. The review also recommended removing the residency requirements and replacing the cap on fees with an offence of 'demanding a fee that is excessive' and giving agents the option of arranging their professional indemnity and fidelity insurance through an insurer of their choice.

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

Cabinet approval for the drafting of legislation to implement the majority of the remaining recommendations will be sought by August 2005.

2.1.2.6.4 Pawnbrokers and Second Hand Dealers Act

The review of the *Pawnbrokers and Second-hand Dealers Act 1994* was endorsed by Government in February 2003. The review recommendations have been drafted into the Pawnbrokers and Second-hand Dealers Amendment Bill, which will shortly be considered by Cabinet for approval to print and introduce into Parliament.

Finalisation of the Bill was delayed due to the inclusion of provisions for non-NCP reforms related to the Burglary Reduction Strategy. However, these provisions will now be included in a separate Bill, to expedite passage of the NCP reforms.

2.1.2.6.5 Debt Collectors Licensing Act

The NCP review found that many of the restrictive provisions in the *Debt Collectors Licensing Act 1964* are in the public interest, but recommended that limits on fees charged to creditors by debt collectors and the requirement for written contract between creditors and debtors be removed. The review also recommended that licensing be extended to cover debt collectors' employees.

Eight of the eleven recommendations contained in the review recommended either the retention of the status quo, or further examination of issues. These recommendations have been implemented. Cabinet approval for the drafting of legislation to implement the remaining three recommendations will be sought by August 2005. A more complete review of the Act is scheduled for 2005-06. The scoping and initial research for this review has been completed but the review cannot commence until higher priority projects are completed.

2.1.2.6.6 Employment Agents Act

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

- replace the requirement for employment agents to be licensed with a negative licensing scheme that will allow persons to be excluded from the employment agents industry if in breach of regulated standards or engaging in unjust conduct;
- relax the requirement to provide employees with a "Notice of Employment" where provision of such notice is impractical, subject to the consent of the employee;
- remove the need to seek approval of a scale of fees chargeable to employers; and
- allow fees to be negotiated between employment agents and employers but preclude agents from demanding or receiving any fee that is unjust, where there is no prior agreement.

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

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

The proposed amendments to the Act are yet to be developed. Cabinet approval for the drafting of legislation to implement the remaining recommendations will be sought by August 2005.

2.1.2.6.7 Hairdressers Registration Act

The NCP review of the *Hairdressers Registration Act 1946* was endorsed by Government in February 2003. The review found that restrictions contained in the Act are in the public interest. There has been no change in the Government's policy and there is no current intention to repeal or amend the licensing requirements contained in the Act.

2.1.2.6.8 Real Estate and Business Agents Act

Western Australia endorsed the review of the *Real Estate and Business Agents Act 1978* and Regulations in February 2003. The review recommended that:

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

In all, 17 of the 31 recommendations were for retention of the status quo.

Cabinet approval for the drafting of legislation to implement the remaining recommendations will be sought by August 2005.

2.1.2.7 Petrol Pricing

Detailed information on this matter was provided to the NCC as part of both the 2003 and 2004 progress reports.

The proposal of an independent review was put forward by the NCC in October 2004. Such a review requires some significant planning. It is currently proposed that the review will be considered in August 2005 following the completion of an analysis of retail site data by the Department for Consumer and Employment Protection. That analysis is scheduled for completion in July 2005.

It is presumed that the Royal Automobile Club, Victoria (RACV) comments reference the statement on Today/Tonight (Monday, 6 December 2004) that "Perth motorists probably pay two cents a litre more than they should if they just had a totally open free market system in place".

The statement would appear to be incorrect based upon unleaded petrol retail price information for Australian capital cities published by the Australian Bureau of Statistics (ABS), FuelWatch and Informed Sources. The data presented below (refer to 'Average Price' in each table) reveal that Perth motorists have

been paying amongst the lowest prices for unleaded petrol in Australia during each quarter of the assessment period.

Taxpayer-funded rebates provided to motorists in Melbourne and Brisbane [worth, respectively, 0.43 cents a litre (cpl) and 8.354 cpl] mean that these prices are not a measure of either competition or market efficiency, they do not provide an accurate 'apples with apples' comparison with Perth prices. Removing the rebates provides a more accurate comparison as reflected under the heading 'Adjusted Price'.

As the Adjusted Price shows, in the June and September 2004 quarters, on average, Perth consumers paid the least amount for their unleaded petrol when compared to consumers in other capital cities and during the December 2004 and March 2005 quarters, Perth prices were the second cheapest. Given the size of Perth's market relative to markets such as Melbourne, Sydney and Brisbane this outcome is significant and should address doubts, expressed in the NCC's 2004 deliberation, regarding the consistency of Perth's low fuel prices.

Table 1: Summary of Australian Capital City Unleaded Petrol Prices June 2004 Quarter

City	Perth	Melbourne	Brisbane	Sydney	Hobart	Adelaide	Darwin	Canberra
Average Price	96	97.2	89.9	97.7	103.6	98.6	103.7	99.5
(Add Back Rebate)		0.43	8.354					
Adjusted Price	96	97.63	98.25	97.7	103.6	98.6	103.7	99.5
Ranking	1	2	4	3	7	5	8	6

Source: Australian Bureau of Statistics

Table 2: Summary of Australian Capital City Unleaded Petrol Prices September 2004 Quarter

City	**Perth**	**Melbourne**	**Brisbane**	**Sydney**	**Hobart**	**Adelaide**	**Darwin**	**Canberra**
Average Price	98.9	98.9	93.2	102.1	107.4	101.2	106.8	102.9
(Add Back Rebate)		0.43	8.354					
Adjusted Price	98.9	99.33	101.55	102.1	107.4	101.2	106.8	102.9
Ranking	1	2	4	5	8	3	7	6

Source: Australian Bureau of Statistics

Table 3: Summary of Australian Capital City Unleaded Petrol Prices December 2004 Quarter

City	Perth	Melbourne	Brisbane	Sydney	Hobart	Adelaide	Darwin	Canberra
Average Price	102	100.7	94	104.3	110	102.8	110.8	104.2
(Add Back Rebate)		0.43	8.354					
Adjusted Price	102	101.1	102.3	104.3	110	102.8	110.8	104.2
Ranking	2	1	3	6	7	4	8	5

Source: Australian Bureau of Statistics

Table 4: Summary of Australian Capital City Unleaded Petrol Prices March 2005 Quarter.

City	Perth	Melbourne	Brisbane	Sydney	Adelaide
Average Price	99.4	98.9	98.9	101.1	102.0
(Add Back Rebate)		0.43	8.354		
Adjusted Price	99.4	99.3	107.3	101.1	102.0
Ranking	2	1	5	3	4

Source: FuelWatch and Informed Sources

2.1.2.8 Consumer Protection

2.1.2.8.1 Retirement Villages Act

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

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

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

Nineteen of the 47 review recommendations have been implemented. Twelve recommendations were implemented by the introduction of the 2003 Retirement Villages Code of Practice, two by the SAT legislative package in 2004, and one by the *Acts Amendment (Equality of Status) Act 2003*. A further four recommendations were for retention of the status quo.

Remaining required amendments to the Act are being progressed.

The Consumer Protection Legislation Amendment and Repeal Bill 2004 currently amends the *Retirement Villages Act 1992* to exempt residential aged care facilities that achieve and maintain Commonwealth certification or accreditation under the provisions of the *Commonwealth Aged Care Act 1997*, from the provisions of the *Retirement Villages Act 1992*. The Bill lapsed in the Legislative Assembly in January 2005 following introduction and second reading in August 2004. In May 2005, the drafting and passage priority assigned to the Bill was increased. Essential consultation is being undertaken with key stakeholders on other provisions in the Bill, which is expected to be available for introduction into Parliament in the Spring 2005 session.

Cabinet approval for the drafting of legislation to implement the remaining recommendations will be sought by August 2005.

2.1.2.8.2 Credit (Administration) Act

The NCP review of the *Credit (Administration) Act 1984* recommended that the licensing requirements be repealed and that many of the powers of the Tribunal and Commission be removed, but that the disciplinary provisions are retained on public interest grounds.

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

Western Australia will implement the endorsed recommendations through amendment of the Act. Cabinet approval for the drafting of legislation to implement the review recommendations will be sought by August 2005.

2.1.2.9 Gambling

The Government's most recent decision in relation to the exclusive operating status of the Totalisator Agency Board (now Racing and Wagering Western Australia) and the Lotteries Commission was to reject the NCP Review recommendation to provide for the licensing of further suppliers by State agreement on the basis that to do so would result in an expansion of gambling opportunities in the community. Extensive information on the public interest of these matters was provided to the NCC in 2004.

In relation to minor gaming activities, it is considered that the review recommendations have been enacted by the Government as follows:

- *Removing the restriction on casino games being played for community gaming subject to appropriate changes being negotiated in the Burswood Casino Agreement; and*

- *Removing the restriction on the playing of two-up subject to appropriate changes being negotiated in the Burswood Casino Agreement.*

  - Negotiations were undertaken with Burswood on the possibility of reaching agreement on relaxing these restrictions. It has become apparent that the possibility of the Government reaching a negotiated position, that is acceptable to the State, is highly problematic. From the Government's point of view, this matter is therefore regarded as finalised.

- *Retaining a licence system for organisations conducting bingo which should be conducted for community benefit rather than private gain; and*

- *Retaining licensing requirements and associated operating restrictions for minor lotteries, which should continue to be available to charitable and community based organisations.*

  - The Review considered two restrictions:

    * whether or not the licensing requirements are justified in the public interest; and

    * whether or not the restriction that limits access to bingo and minor lotteries to not-for-profit organisations is justified in the public interest.

  - The review conclusion was that maintenance of both the licensing and access restrictions is justified in the public interest. On this basis no further action is required on these matters.

  - These matters did not attract attention from the NCC until the 2004 assessment and it is unclear why they have been included as the review recommendation was to maintain the restrictions.

Progress was made towards amending the *Gaming and Wagering Commission Act 1987* to licence professional fundraisers. However, during the initial drafting it became apparent that similar provisions were being prepared for inclusion in the Public Collections Bill, which is currently being drafted.

2.1.2.10 Planning, Construction and Development Services

2.1.2.10.1 Planning

Western Australia's planning legislation consists of the *Town Planning and Development Act 1928*, the *Metropolitan Region Town Planning Scheme Act 1959* and the *Western Australian Planning Commission Act 1985*. These Acts will be streamlined and consolidated via the Planning and Development Bill 2005 and the Planning and Development (Consequential and Transitional Provisions) Bill 2005. The Bills were second read in the Legislative Council on 18 May 2005, following passage through the Legislative Assembly on 5 May 2005.

2.1.2.10.2 Weights and Measures Act

In 2004 Western Australia informed the NCC that changes agreed at the national level would be adopted by replacing the State's Act with new legislation.

The Trade Measurement (Green) Bill 2004 and the Trade Measurement Administration (Green) Bill 2004 were tabled for the purposes of public comment in the Legislative Assembly on 26 November 2004. The Green Bills were based substantially on uniform model legislation already in place in other States and Territories, and addressed issues relating to maintaining weighing and measuring equipment such as:

- sale of goods by weights and measure;
- labelling of pre-packed articles;
- weighing and measuring instruments;
- licensing of service organisations; and
- licensing of public weighbridges.

The public consultation period for the green Bills closed on 31 March 2005. Submissions were incorporated into final white Bills prepared for passage through Parliament, which were second read in the Legislative Assembly following introduction on 24 May 2005.

The white Bills repeal the State's *Weights and Measures Act 1915* and Regulations, and establish nationally uniform weights and measures in accordance with the recommendations of the national review. Following enactment of the Bills, the State's position with regard to weights and measures legislation will conform to national standards and NCP requirements.

Specifically, the Trade Measurement Bill 2005 and the Trade Measurement Administration Bill 2005:

- impose conditions that apply to measuring instruments used for trade in weighing or measuring articles;
- impose conditions for the measurement of articles and substances for determining their sale price;
- impose special conditions that must apply with respect to transactions made by measurement;
- provide for the Commissioner to issue permits to sell certain pre-packed articles;
- establish licensing requirements for business entities or persons who operate within the weighing industry;
- impose conditions with respect to pre-packed articles including requirements for packaging and sale;
- provide for standards and conditions and imposes duties with respect to the verification and certification of measuring instruments;
- provide for disciplinary action against a licensee who transgress and rights for administrative decisions to be reviewed;
- provide for the appointment of inspectors and confers powers on inspectors so that they can undertake compliance functions;
- establish evidence requirements and liabilities of employers, directors and bodies corporate; and
- provide for transitional arrangements that will apply for the measurement of alcoholic liquor.

2.1.2.10.3 Local Government (Miscellaneous Provisions) Act and Building Regulations 1989

Western Australia is in the process of developing new building legislation to replace Part 8 and Part 15 of the *Local Government (Miscellaneous Provisions) Act 1960* and the Building Regulations 1989. The new legislation will take into consideration NCP reform requirements by adopting the Building Code of Australia as the primary building standard, introducing competition into the building certification process, and providing a registration system for appropriately qualified building surveyors.

The Minister for Housing and Works has recently announced the fast tracking of the proposed new Building Act. It is anticipated that a public discussion paper

on a proposed Building Act will be released for public comment around July 2005.

In the meantime, the Department intends to amend the *Local Government (Miscellaneous Provisions) Act 1960* and associated regulations to introduce the national accreditation framework for building surveyors and allow contestable certification services for building approvals. The *Local Government (Miscellaneous Provisions) Amendment Bill 2005* contains proposals which were included in the *Local Government (Miscellaneous Provisions) Amendment Bill 2003,* plus some improvements and some other reforms identified as part of the transfer of appeals to the SAT. Proposed provisions for the Bill have been refined following consultation with the Department of Local Government and Regional Development, Department of Consumer and Employment Protection and the State Solicitor's Office. Cabinet approval to draft the legislation will be sought in the near future.

2.1.2.10.4 Architects Act

The *Architects Bill 2003* was passed by both Houses of Parliament on 26 November 2004, and received the Governor's Assent on 8 December 2004.

It is proposed to proclaim the Act to come into operation simultaneously with the gazettal of supporting regulations as soon as possible after July 2005. (The Act cannot be proclaimed until the Regulations are finalised.)

In keeping with all of the NCP recommendations, the new Act:

- broadens membership of the Architects Board to include industry, consumer and educational representatives;
- contains no restrictions on practice, it protects title only;
- restricts the title "architect" to registered persons only, but permits derivatives which describe a recognised competency, for example landscape architect, or architectural draftsperson to be used by non-architects;
- allows that only natural persons may be registered as "architects", while organisations offering the services of an architect must have adequate arrangements in place to ensure an architect supervises, controls, and is ultimately responsible for the architectural work provided;
- modifies complaints and disciplinary procedures to introduce an informal conciliation and inquiry process, and provide avenues for appeal; and
- moves requirements for registration to the regulations, and refers to a national standard setting body, the Architects Accreditation Council of Australia (AACA).

2.2 OUTSTANDING LOW PRIORITY LEGISLATION REVIEW AND REFORM MATTERS

Western Australia's progress on reviewing, and reforming where necessary, its outstanding non-priority legislation is provided below.

2.2.1 Agricultural obligations

The restrictions remaining in outstanding legislation review in the low-priority category are either not substantial or provide a net public benefit.

The following Acts have not been reviewed as they will be replaced by the Agriculture Management Bill, the drafting priority of which was recently increased by the Government:

- *Agricultural Products Act 1929* and Regulations;
- *Artificial Breeding of Stock Act 1965*;
- *Beekeepers Act 1963*;
- *Fertilisers Act 1977*;
- Piggeries Regulations 1952;
- *Seeds Act 1981* and Regulations; and
- *Stock (Identification and Movement) Act 1970*.

The following Acts have not been reviewed, but will also be replaced by the Agriculture Management Bill or by separate legislation expected to be introduced this year:

- *Cattle Industry Compensation Act 1965*; and
- *Plant Pests and Diseases (Eradication) Fund Act 1996* [previously the *Skeleton Weed and Resistant Grain Insects (Eradication Funds) Act 1974*]

2.2.2 Health obligations

Health Act 1911

A discussion paper proposing a new Public Health Act is shortly to go to Cabinet, for approval for public consultation. The following Regulations are to be reviewed as part of the review of the *Health Act 1911*:

- Health (Asbestos) Regulations 1992;
- Health (Cloth Materials) Regulations 1973;
- Health (Construction Work) Regulations 1973;

- Health (Pesticides) Regulations 1956;
- Health (Pet Meat) Regulations 1990;
- Health (Public Buildings) Regulations 1992;
- Health Act (Swimming Pools) Regulations 1964; and
- Offensive Trades (Fees) Regulations 1976 (issued under Health Act 1911).

Hospitals and Health Services Act 1927

A review of this Act will commence early in the 2005-06 financial year. The following Regulations are to be reviewed as part of this review:

- Hospitals (Licensing and Conduct of Private Psychiatric Hostels) Regulations 1997
- Hospitals (Service Charges) Regulations 1984

2.2.3 Transport, Planning and Infrastructure

Marine

The Western Australian Marine Act 1982 and the Western Australian Marine (Hire and Drive Vessels) Regulations 1983 will be repealed by the proposed Maritime Bill, currently being drafted. A review of the existing maritime acts will also be undertaken in an effort to meet outstanding NCP review obligations. Any reforms recommended by the review will be included in the Maritime Bill.

Planning

The *Town Planning and Development Act 1928*, the *Western Australian Planning Commission Act 1985*, and the *Metropolitan Region Town Planning Scheme Act 1959* have been consolidated and streamlined by the Planning and Development Bill 2005 and the Planning and Development (Consequential and Transitional Provisions) Bill 2005. These Bills are at second reading stage in the Legislative Council.

2.2.4 Legal obligations

Law Reporting Act 1981

This Act was reviewed in 1999. The review identified one restriction on competition which was the requirement for written consent from the Attorney General for the publishing of the judicial decisions of State courts (sections 3 and 6 of the Act). It was initially proposed that this

restriction be dealt with by administrative change, but a conditional waiver of the kind proposed is not permitted under section 6 of the Act.

However, the objectives of the NCP review recommendation have been achieved by other administrative means, in that each of the major publishers now has unrestricted electronic access to the judicial decisions of State courts under agreements with the Legal Practice Board in relation to its Practitioners Legal Electronic Access Service (PLEAS) unrecorded judgements subscription service. In turn, each of these publishers has obtained the consent of the Attorney General under section 6 of the Act to publish the judgements both online and on CD-ROM.

Consequently, no amendments to the *Law Reporting Act 1981* are required.

Stipendiary Magistrates Court Act 1957

This Act has been superseded by the *Magistrates Court Act 2004* which commenced on 1 May 2005. The Magistrates Court Act was subjected to an NCP review during its development and no NCP issues were identified. No further action is required with respect to either the *Stipendiary Magistrates Court Act 1957* or the *Magistrates Court Act 2004*.

Suitors Fund Act 1964

This Act is currently the subject of a further review being chaired by the Solicitor General.

Trustee Companies Act 1987

The whole issue of regulation of trustee companies has been held up waiting for the Commonwealth to advise whether it agrees with the Australian Prudential Regulation Authority (APRA) being the regulator. The Commonwealth has now advised that APRA will not be involved in prudential supervision of trustee companies. The State and Territory SCAG Ministers have asked for an options paper to be prepared.

2.2.5 Local Government obligations

Local Government Act 1995

The issues identified under the NCP review of the Act related to restrictions imposed by local governments on their employees, to limit their choice of superannuation funds to the one service provider. The NCP review concluded that the requirement for local governments to mandate a single industry superannuation scheme for employees was inappropriate.

Section 5.47 of the Act was amended in March 2005 so that regulations dealing with superannuation can apply to more than one scheme. The

amendment provides for regulations to enable other superannuation schemes to be made available to local government employees.

Caravan Parks and Camping Grounds Act 1995

The NCP review of the Act was endorsed by Government in March 2004, when Government decided to:

- remove regulation 49, which prohibits the issue of a licence for a transit park or a nature based park if there is a licensed caravan park or camping ground within 50 kilometres; and

- re-examine section 3(1), which exempts State public sector bodies from the provisions of the Act. This provision was found by the review to comprise a significant restriction, as it leads to a lack of competitive neutrality between privately managed camping parks operated by or leased from government agencies and private camping parks: the latter must be licensed and comply with higher standards while the former are exempted from the Act. The original review did not clearly identify whether the standards that apply to these similar types of camping parks are set at an appropriate level.

The re-review of section 3(1) is almost finalised. The Department of Local Government and Regional Development (DLGRD) is collating required advice from the State Solicitor's Office (SSO) and the Department of Indigenous Affairs (DIA), on matters relating to the operation of caravan parks, camping grounds and nature based parks on DIA and other Crown lands. The review will shortly be considered by the Government.

2.2.6 Consumer and Employment Protection obligations

Charitable Collections Act 1946 and Regulations and *Street Collections (Regulation) Act 1940* and Regulations

The *Charitable Collections Act 1946* and the *Street Collections (Regulation) Act 1940*, together with their Regulations, will be replaced by the Public Collections Bill. The drafting of that Bill is near completion and Cabinet approval to print is expected to be requested shortly. The Government has recently assigned an increased drafting and passage priority to the Bill, providing for introduction and passage in 2005.

Cooperative and Provident Societies Act 1903

The *Co-operative and Provident Societies Act 1903* will be repealed by the Co-operatives Bill which will also replace the *Companies (Co-operative) Act 1943*. In December 2004 Cabinet has approved the drafting of the Cooperatives Companies Bill as a green Bill for public consultation. Drafting is proceeding. The Government has recently assigned an increased drafting and passage priority to the Green Bill, providing for

introduction in the Spring session of 2005. Final legislation on co-operatives is expected in 2006.

Consumer Credit (Western Australia) Act 1996

The *Consumer Credit (Western Australia) Act 1996* applies the Uniform Consumer Credit Code in Western Australia. The Uniform Consumer Credit Code has been the subject of a national review for NCP purposes. This review is being managed by the Uniform Consumer Credit Code Management Committee ("UCCCMC") on which all Australian jurisdictions are represented.

The review has been completed and work is still underway on the implementation of the review. The implementation plan falls into two discrete parts: clarifying the application of the Code to certain non-mainstream lending practices (vendor terms finance etc.); and reformatting some elements of pre-contractual disclosure to make it simpler and more meaningful for consumers. A Bill has been drafted to achieve the former, and drafting instructions are with NSW Parliamentary Counsel in respect of the latter. Since the recommendations being implemented were not closely formulated, it took some considerable time to update and then convert into contemporary policy proposals.

The UCCCMC is in regular contact with the NCC and the Commonwealth Office of Regulation Review (ORR), to keep them aware of progress.

2.2.7 State Development obligations

Coal Industry Superannuation Act 1989

The Coal Industry Superannuation Amendment Bill 2005 received its second reading in the Legislative Council on 17 May 2005, following passage through the Legislative Assembly on 5 May 2005. The Bill implements the amendments recommended in the "Review of the Coal Industry Superannuation Board and the *Coal Industry Superannuation Act 1989*", including that section 22 of Act, which allows for Government Assistance to the Coal Industry Superannuation Fund, be removed.

2.2.8 Other

Small Business Guarantees Act 1984

The *Small Business Guarantees Act 1984* and Regulations have been repealed as required.

Mutual Recognition (WA) Act 2001

In December 2002 COAG agreed to a review by the Productivity Commission (PC) of both the Mutual Recognition Arrangement (MRA) and the Trans-Tasman Mutual Recognition Arrangement (TTMRA). At the same time they asked for an officers' group to consider the findings of PC and report on them to COAG and the New Zealand Government.

The PC released its report *Evaluation of Mutual Recognition Schemes* on 17 October 2003. It found that both the MRA and the TTMRA had been effective overall in increasing goods and labour mobility across jurisdictions and reducing costs to industry. The PC made 74 findings intended to improve or extend the operation of the MRA and the TTMRA.

The Committee on Regulatory Reform considered the PC's report and submitted an interim report to COAG and the New Zealand Government.

In May 2004, COAG and the New Zealand Prime Minister noted 29 of the PC's findings and requested further work on the remaining 45 by a Cross-Jurisdictional Review (CJR) Forum. The CJR has recently completed its final report for COAG.

Western Australia awaits COAG's out of session endorsement of the CJR's report prior to implementing any required legislative amendments in line with national arrangements.

Petroleum Products Subsidy Act 1965 and Regulations

Consistent with other jurisdictions, Western Australia is not required to review the *Petroleum Products Subsidy Act 1965* and Regulations, as the Act does not involve the imposition of any restrictions on competition by the Western Australian Government.

The Act is an administrative Act providing for the functioning in Western Australia of the Commonwealth's petroleum subsidy scheme, which the Act notes is formulated by the Commonwealth Minister for the purposes of the *States Grants (Petroleum Products) Act 1965* of the Commonwealth. Relevant fuel products covered by the Act, and registered distributors eligible for the subsidy, are determined by the Commonwealth Minister. The NCP implications of subsidising some products and distributors, and not others, remains the responsibility of the Commonwealth.

2.3 REVIEW AND REFORM OF NEW LEGISLATION

There have been no changes to Western Australia's gatekeeping roles and responsibilities, or to the independence of the gatekeeper, since the 2004 assessment.

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

Preparation of new Western Australian laws takes place in an environment where there is a high degree of awareness of competition policy principles and the State's obligations under clause 5. As part of the whole of government commitment to NCP, the Treasurer has corresponded regularly with Ministers about the State's ongoing NCP obligations. The DTF likewise corresponds regularly on NCP matters with Departmental Chief Executive Officers, Ministerial Chiefs of Staff, and agency analysts. Western Australia's *Public Interest Guidelines for Legislation Review* (2001), circulated to all agencies and other interested parties, also promote the need for identifying restrictions in new legislation, and reviewing the legislation where there are restrictions, to determine that such restrictions genuinely further the public interest.

2.3.1 Gate-Keeping Processes for Reviewing New Legislation

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

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

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

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

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

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

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

The process and method for conducting and implementing reviews of new legislation are the same as for existing legislation and are detailed in Western Australia's *Public Interest Guidelines for Legislation Review* (2001).

3 COMPETITIVE NEUTRALITY

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

Western Australia's program of CN implementation and review is substantially complete. The State's biggest utilities have been subject to CN for a number of years. These businesses have accounted for more than 80 per cent of the business revenues earned by the Government and provide the bulk of the benefits expected to be received from implementing CN.

3.1 COMPETITIVE NEUTRALITY COMPLAINTS

3.1.1 Complaints Handling Process

Western Australia has in place a CN complaints mechanism in accord with its obligations. Western Australia's *Policy Statement on Competitive Neutrality* (1996) notes that:

> '*the complaints mechanism will apply only to public sector agencies which are required to comply with competitive neutrality and to in-house bids taking part in a formal tender process*'.

Agencies which are required to comply with the policy statement have either been listed on the original policy statement (typically significant Government enterprises), or have had that requirement ratified by Cabinet, on the recommendations of a completed CN review carried out at the request of the relevant Minister.

All CN reviews are carried out in accordance with the State's policy statement. Competitive neutrality review reports are required to contain an assessment of whether the Government agency enjoys a competitive advantage by virtue of its ownership by Government, and whether the removal of this advantage would be in the public interest.

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

- are, or may be, directly and adversely affected by the competitive advantage alleged to be enjoyed by the Western Australian Government agency carrying on a significant business activity, if that agency is required to comply with CN; or

- compete or seek to compete in a particular market with the Western Australian Government agency, but are prevented from doing so by the competitive advantage alleged to be enjoyed by the agency in contradiction of that agency's required CN compliance.

Western Australia's complaints handling process involves complainants initially making contact with the agency allegedly contravening its CN compliance requirement, to discuss and, if possible, resolve the allegation. If resolution of an allegation of non-compliance cannot be reached between the complainant and the relevant agency, complainants are then advised to lodge a complaint in writing to the Complaints Secretariat at the Microeconomic Policy Unit within the DTF. (This Unit was formed from a merger in late 2004 of the Competition Policy Unit (CPU) and the Utilities Policy Unit at the DTF.)

Allegations of non-compliance need to be accompanied by sufficient evidence to establish a *prima facie* case for investigating an agency's pricing strategy, cost structure and behaviour. The Secretariat is responsible for the initial screening of the complaint and determining whether the complaint falls within the scope of the complaints mechanism.

Previously the Expenditure Review Committee (ERC) was responsible for approving formal CN investigations recommended to it by the Secretariat (at the DTF). However, in May 2005 the ERC delegated to the Treasurer the power to authorise any future formal investigations into CN complaints, with investigations to be undertaken by the DTF and recommended actions brought back to the ERC for consideration. In addition, the ERC noted that the Treasurer would report to the ERC on any direction given to the DTF to undertake an investigation into specific CN complaints. These decisions on delegation were subsequently ratified by Cabinet.

3.1.2 Complaints Received

Two formal CN complaints were received in the past year and investigations into these matters have begun to ensure required agency compliance with the State's CN policy.

3.1.2.1 Formal Complaints and Investigations

3.1.2.1.1 Tourism Western Australia

On 4 November 2004 the Secretariat received a submission from a company that is a wholesaler of tourism products. The concerns raised in the submission were primarily in regard to the Western Australian Visitor's Centre (WAVC) and the Western Australian Tourism Network (WATN) activities of Tourism Western Australia (TWA).

The WAVC is located in Perth City and provides tourist information and tourism booking services. The WATN is operated by WAVC staff and essentially is an on-line marketing vehicle (site: www.westernaustralia.com), with different levels of membership offering different levels of marketing benefits to tourism operators.

The submission alleged that:

- the booking prices charged to tourism operators by the WAVC fail to fully recover costs and therefore are in contravention of competitive neutrality principles; and

- the full costs associated with operating the WATN are not reported by TWA, with the result that WATN competes unfairly with commercial booking agents and is not competitively neutral.

The allegation against the WAVC was deemed invalid as the 2001 TWA CN review found that the cost of implementing CN for the WAVC outweighed the community benefit of doing so. As a consequence it was agreed by Cabinet that the WAVC products and services should not be subject to the full cost pricing requirements of competitive neutrality.

The allegation against the WATN was found to be worthy of investigation as the 2001 TWA CN review found that full cost recovery principles should apply to the WATN. This means that the WATN's cost structure (and prices) should incorporate a rate of return and the value of taxes and charges forgone, as well as take account of the cost of public sector employment conditions, the requirements to provide non-commercial services and Government regulatory and information requirements.

In May 2005 Cabinet endorsed the Expenditure Review Committee'se (ERC) decision authorising the DTF to investigate the WATN's compliance with the State's CN Policy. This investigation is currently in progress.

3.1.2.1.2 Water Corporation

On 15 February 2005 the Secretariat received a letter from a private waste disposal operator, complaining that their septage waste disposal site was unable to compete with a similar waste disposal business that is a joint venture between the Water Corporation and the City of Albany. The complainant claimed that the prices charged by the joint venture were not sufficient to recover costs.

As the Water Corporation's entire operations are fully subject to CN by virtue of the *Water Corporation Act 1995*, its involvement in the joint venture should be on a competitively neutral basis. Prices charged by the joint venture should reflect this. In view of the Water Corporation's obligation to comply with CN, the information provided by the complainant, and the absence of any further information that is publicly available on the joint venture's finances, there would appear to be a case, *prima facie*, for investigation of the complaint.

Accordingly, in May 2005 Cabinet endorsed the ERC earlier decision authorising the DTF to investigate the Water Corporation's compliance with the State's CN Policy, in relation to its involvement in a septage waste disposal joint venture with the City of Albany. This investigation is currently in progress.

In the case of the City of Albany, which has a 50% stake in the joint venture, its share of the joint venture's annual income would need to exceed $500,000 for it to be regarded as a significant business activity. If this test were to be satisfied, then there would in turn need to be a review of the benefits and costs of applying CN to the City's involvement in the joint venture. The City of Albany would be responsible for carrying out this review.

3.2 PROGRESS OF COMPETITIVE NEUTRALITY REVIEWS

Western Australia has in the past few years focused its attention on the smaller government agencies that are considered to be significant on the basis of criteria outlined in the State's *Policy Statement on Competitive Neutrality* (1996). This has involved conducting reviews to see whether implementing CN is in the public interest, and if so how it should be introduced.

3.2.1 Department of Land Information – Statutory Authority

In October 2002, Cabinet gave "in principle" approval for the creation of a Land Information Statutory Authority with commercial powers, and in October 2003 Cabinet:

- approved the drafting of a bill to establish a Land Information Statutory Authority; and
- gave "in-principle" approval to the establishment of a shared land information platform (SLIP).

The approvals were subject to a number of conditions, including that a review of the CN implications of establishing the Authority was to be undertaken, prior to the Department of Land Information (DLI) seeking approval to print the bill.

A CN review of the proposed statutory authority was endorsed by the Government in August 2004.

The review identified that the Authority will be operating in a range of contestable or potentially contestable markets, and also in markets in which there is little or no competition. The approved drafting instructions to establish the Authority incorporated elements of CN, such as payment of tax equivalents and commercial pricing requirements.

The review noted that adoption of CN principles from the outset would ensure that the Authority enjoys no competitive advantages in pricing behaviour, as a result of its Government ownership, and concluded that the services of the Authority should be subject to CN principles and the CN complaints process.

This will mean that:

- services will be priced so that there is no net advantage or disadvantage in the prices charged as a result of the Government ownership of the Authority; and

- potential competitors will have a means of airing their complaints about the commercial practices of the Authority, if they can make a *prima facie* case that, as a result of the Authority not operating within CN principles, their businesses are being unfairly penalised.

The Authority is to provide core Government services and undertake commercial activities. Specifically, the Authority will:

- execute the land titling, property valuation and land information functions of the DLI; and

- lead the commercial development of the State's land information asset (the core of which is the DLI's dataset).

3.2.2 Radiation Oncology

Within Western Australia there is one private and one public radiotherapy service provider, with a highly competitive, rather than collaborative, approach between providers. For several years the Perth Radiation Oncology Centre (PROC), the private provider of radiation oncology services in Western Australia, has argued that the Sir Charles Gardiner Hospital (SCGH) radiation oncology service's practice of bulk-billing of private patients places PROC's services at a competitive disadvantage.

In early July 2004, officers from the Health Department, the DTF and SCGH met to determine whether the Minister for Health should be advised that a CN review should be conducted. Arising from that meeting, the Health Department provided the DTF with a draft paper assessing whether the necessary criteria for a CN review were met. The paper concluded that the service did not satisfy the established criteria for a "significant government business activities" and hence that the activities of the SCGH radiation oncology unit did not fall within the scope of the CPA, specifically in respect to CN.

However, the DTF noted that with the planned installation of two new linear accelerators by July 2005, the value of the asset base would increase to approximately $10 million. The view of the DTF is that following the planned expansion; the criterion for "significant government business activity" will be met. Consequently, the DTF and SCGH agreed that a CN review be conducted in July 2005.

The commencement of the review is contingent upon the completion of the redevelopment of radiation oncology services at SCGH.

On 19 August 2004, the Health Minister wrote to the Treasurer committing to conducting a competitive neutrality review of radiation oncology services at SCGH in July 2005. However, the Health Department has since advised that their capital works plan to install two new linear accelerators has been delayed until January 2006. As the CN review is contingent upon this expansion it has also been delayed accordingly, however the commitment to review remains.

3.2.3 Eastern Goldfields Transport Board

Western Australia does not propose to undertake a competitive neutrality review of the Eastern Goldfields Transport Board (EGTB).

Western Australia's 1996 "*Policy Statement on Competitive Neutrality*", endorsed by the NCC, provides that:

> *"A government business activity is unlikely to be significant unless:*
>
> - *its annual revenue base or turnover is more than $10 million; or*
> - *it has an asset base with a value in excess of $10 million."*

The annual turnover of the EGTB is around $2 million.

In addition, the EGTB has rationalised its charter work as it has refocussed on its core business of providing public transport bus services for the Kalgoorlie-Boulder community. Charter work is now a very reduced aspect of the EGTB business and the Board requires that any charter operations are only undertaken at prices that recognise all of the costs incurred, including fixed costs.

3.2.4 Universities

Legislation to clarify the powers of universities to engage in commercial operations has not been introduced, but is being rapidly progressed. A reference group involving the public universities has been reconvened to develop drafting instructions to amend the university Acts to facilitate commercial activities in relation to:

- how the university Acts should be amended to make it clear that universities can engage in purely commercial activities (both within and outside Western Australia) which are not necessarily ancillary to, or directly facilitating education and research, but which further the objects of the universities;
- how and to what extent the universities should have greater autonomy in the use of the vested land on which they principally run their operations;
- the most appropriate way of mitigating the potential financial risks associated with allowing universities to engage more fully in commercial activities.

Implementing an appropriate CN complaints procedure within the universities does not require any amendments to existing university legislation. Universities have become subject to CN, including the State's CN complaints process, since the CN review of Western Australia's universities' business operations was endorsed by the Government in February 2003.

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

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

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

- requiring that universities adopt competitive neutrality principles for their commercial operations;
- subjecting universities to Western Australia's complaints process; and
- passing legislative amendments arising from the legislation review.

It is worth noting that the Commonwealth Minister for Education, Science and Training has indicated in a recent paper, Building Better Foundations for Higher Education, that the Commonwealth is intent on achieving broad based national legislation to facilitate university commercial activities.

4 STRUCTURAL REFORM

Over the past year Western Australia has continued to progress structural reforms in accordance with its commitment to the CPA and the needs of the State to promote a competitive economy. The current reforms build on those of recent years and those undertaken in the early 1990s, preceding NCP, such as the separation of the State Energy Commission of Western Australia into Western Power and AlintaGas, and corporatisation of what was then the Water Authority.

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

On 8 April 2004 the *Electricity Industry Act 2004* was passed by Parliament. The Act is intended to facilitate the development of competition in the electricity generation and retail sectors and contains provisions to establish a wholesale electricity market, an independent licensing regime, an electricity access code and consumer protection measures.

The achievement of the initiatives listed above and the creation of a more competitive industry are key aspects of the Government's electricity reforms. In particular, the development of a Wholesale Electricity Market (WEM) will promote greater competition and private sector investment.

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

4.1 ELECTRICITY

4.1.1 Background

Under the current industry structure the Government-owned corporatised business entity, Western Power Corporation (WPC), is the primary provider of electricity services in Western Australia. Electricity is distributed via two major interconnected transmission and distribution systems - the South West Interconnected System (SWIS) and the North West Interconnected System (NWIS) - and 28 isolated regional systems. Within the Corporation four specific purpose business units (generation, networks, retail and regional) provide services to the wider community. The remainder of the electricity industry is

characterised by a number of private companies throughout the State that generate electricity primarily to supply their own mining, mineral processing or other operations and in some instances public and private townships.

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

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

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

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

The ERTF's review and proposed structural and regulatory reforms accord with Western Australia's obligations under Clause 4 of the CPA, in particular with regard to:

- separating regulatory legislation for the electricity industry from WPC's enabling legislation;
- separating the monopoly elements from potentially competitive elements of the industry;
- ensuring competitive neutrality is achieved; and
- ensuring transparent funding arrangements for the delivery of community service obligations.

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

4.1.2 Regulatory and Market Reform

The *Electricity Industry Act 2004* was proclaimed in September 2004 and will facilitate the development of competition in the generation and retail sectors of the electricity industry. The Act also contains provisions to establish:

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

4.1.2.1 Wholesale Market

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

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

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

In August 2003 the Electricity Reform Implementation Unit (ERIU) established the Market Rules Development Group (MRDG) and seven specific expert teams supporting ERISC, to assist it in developing the detailed market design and drafting the market rules for the wholesale electricity market in the SWIS. The MRDG (chaired by the ERIU) and participating expert teams comprised more than 40 representatives across industry, WPC and Government. After a

three-year process of consultation with the electricity industry, the market rules for the operation of the WEM were approved by the Minister for Energy in October 2004. A key feature of the WEM, which is scheduled to commence on 1 July 2006, is the Independent Market Operator (IMO).

The IMO, which was established on 1 January 2005, will have responsibility for operating the WEM and setting and procuring, by way of electricity capacity auctions, the level of reserve capacity to meet peak periods of demand. It will also be responsible for the scheduling of electricity load dispatch from generators and the balancing of electricity supply with demand. The IMO will publish in July 2005 a statement of opportunities, based on the latest available information, to determine the details of generation capacity to be auctioned in October 2005. After the initial auction, the IMO will periodically conduct further capacity auctions as required.

Given that the market will not be functional until July 2006 the Government has introduced some transitional arrangements to assist Independent Power Producers (IPPs) to compete in the electricity wholesale market. A Top Up and Spill (TUAS) regime was implemented in April 2004. Under the TUAS regime an IPP whose capacity is less than the load it is required to serve is able to 'top up' or purchase electricity from WPC in order to meet its demand. Similarly, where an independent generator is producing more than its load to be served, it is able to 'spill' or sell that excess production to WPC. The enhanced flexibility of the TUAS regime serves to lessen the risk exposure of IPPs considering market entry.

4.1.2.2 Industry Licensing Regime

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

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

On 1 January 2005 the ERA assumed responsibility for issuing, amending, monitoring and enforcing licences. All parties who generate, transmit or distribute electricity at a voltage of 66kV or higher, or who sell electricity, are required to be licensed. Parties who, immediately prior to 1 January 2005, were conducting any of the activities required to be licensed have until

31 December 2005 to apply for a licence, and will be treated as holding a licence until 30 June 2006.

4.1.2.3 Third Party Access

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

As part of the new market framework to be established under the *Electricity Industry Act 2004*, an Electricity Access Code (the Code) was gazetted on 30 November 2004 and commenced on the same day. The Code provides a framework for the independent regulation of certain electricity networks in Western Australia. The electricity network facilities to be initially covered by the Code will be those that form part of WPC's networks in the SWIS, and any other transmission and/or distribution facilities that meet specified coverage criteria.

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

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

Under the Code, WPC is obliged to submit a proposed Access Arrangement, Access Arrangement Information and technical rules to the ERA by 24 August 2005. After assessing the compliance of the proposed Access Arrangement with the requirements of the Access Code and undertaking a public consultation process, the ERA will issue a final decision, which is anticipated to be in November 2005.

4.1.2.4 Retail Contestability and Consumer Protection

Retail contestability thresholds for electricity are being progressively lowered. Increased competition in the retail market will ensure the benefits of efficiency gains in generation are passed through directly to consumers. In July 2001 the threshold was lowered from an average load of at least 1,000 kW (or 8,760 MWh per annum) to an average load of 230 kW (or 2,000 MWh per annum) at a single site. On 1 January 2003, contestability was extended to customers using an average load of at least 34 kW (or 300 MWh per annum). This represented an increase in the number of contestable customers from 450 to around 2,500, meaning that contestability extended to approximately 50 per cent of WPC's total sales.

The Government initially had a target of introducing full retail contestability (FRC) in 2005. However, noting that FRC requires effective competition at all levels of the industry and at the generation and wholesale market levels in particular, the ERTF recommended delaying FRC because the prerequisites for facilitating FRC would not all be in place by this time. To maintain the momentum of reform, however, the threshold for contestability was reduced to 5.7 kW average load (50 MWh per annum) on 1 January 2005. This level of consumption is typical of small businesses. The extension of access to WPC's electricity networks has increased the number of contestable customers to around 12,500 and approximately 60 per cent of WPC's current load in the SWIS is now contestable.

The cost of processes and systems necessary to accommodate this interim step were lower than the costs of FRC because of the smaller number of contestable customers. Following the successful implementation of the aforementioned reform, the need has now arisen for a detailed analysis of the cost of processes and systems necessary to accommodate FRC versus the benefits of securing upstream efficiency gains for end consumers.

In securing Parliamentary approval for passage of the Electricity Corporations Bill 2005 through the Legislative Assembly, the Government has committed to a review of the potential for introduction of full retail contestability to be undertaken by 2009.

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

- the implementation of a Customer Service Code;
- obligations on retailers to have a standard contract with associated standard tariff at or below the uniform tariff cap which is available to any existing or new tariff customer;
- obligations on network service providers to publish an approved consumer connection and extension policy detailing the technical and economic conditions for connection of customers;

- implementation of an Energy Ombudsman scheme providing consumers with a complaint resolution mechanism; and

- a retailer of last resort obligation on WPC to ensure that supply is available to customers whose retailer exits the market.

4.1.3 Structural Reform

The ERTF also recommended that WPC's activities in the SWIS be vertically disaggregated into three independent entities - State Generation, State Networks and State Retail. A fourth entity, the Regional Power Corporation, should also be established with responsibility for electricity supply in the NWIS and WPC's non-interconnected systems. The Government would retain ownership of these four entities, which would deal with each other on an arm's length basis. This approach would be an effective mitigation measure against the potential market power resulting from WPC's current vertical integration.

The Electricity Corporation Bill 2003, required to implement the disaggregation of WPC, was introduced to the Legislative Assembly in October 2003. The Bill progressed to a second reading in the Legislative Council before being withdrawn, as publicised opposition made it evident that the Bill would not pass a third reading. Following this, the Electricity Legislation (Amendments and Transitional Provisions) Bill 2003 had its title changed and was assented by Parliament in a modified form as the Electricity Legislation Amendments Bill 2003 on 20 October 2004.

The Government remained strongly committed to the disaggregation of WPC and the Government recently introduced the Electricity Corporations Bill 2005 into Parliament. This Bill is essentially a composite of the original restructuring Bills introduced in 2003 and, if passed, would see WPC split into four independent functional entities by 31 March 2006.

The Electricity Corporations Bill 2005 was third read in the Legislative Assembly on 30 June 2005. The Bill progressed through the lower house with the only amendments being insertion of two additional clauses, 53 and 54, which provide for the making of contestability orders and prescribe a timetable for the review of full retail contestability It seems that successful passage of the Bill through Parliament is likely, as bipartisan support now appears evident.

However, in the case that the Electricity Corporations Bill 2005 is passed the Electricity Generation Corporation would still be a dominant player in the WEM by virtue of its large share of the generation market (which would be around 90 per cent when the WEM commences). To mitigate the potential market power associated with such a large market share, on 7 April 2005 the Minister for Energy issued a direction to the WPC Board to cap the WPC's generating capacity at 3,000 megawatts. This is expected to apply until sufficient competition has developed in the market (projected to be some time around 2013-14).

The direction will restrict WPC from building any new power generation plant until old plant owned by the utility is retired. The cap will allow private companies to develop the new generation capacity required to meet the State's ongoing electricity needs and, over time, will reduce the market share of the Western Power. The Corporation's ability to replace generation plant that is near the end of its economic life with more efficient new plant will ensure that its generation assets remain competitive over time, increasing competitive pressures in the WEM.

4.1.3.1 Implementation Timetable and Public Consultation

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

- disaggregation of WPC by 31 March 2006, on the provision that the Electricity Corporations Bill 2005 is successfully passed by Parliament prior to this date;
- the implementation of the new wholesale electricity market by 1 July 2006, which is consistent with the recommendations of the ERTF; and
- submission by WPC of a proposed Access Arrangement, Access Arrangement Information and technical rules to the ERA by 24 August 2005.

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

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

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

4.2 GAS

4.2.1 Background

Since 1995, Western Australia has implemented a broad range of structural reform initiatives in the gas industry to ensure a competitive market conducive to private investment. These initiatives have included:

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

Other major commitments in implementing free and fair trade in gas relate to the implementation of a nationally consistent regime for access to gas pipelines and the move towards FRC. The Government is committed to the development of a competitive gas market in Western Australia.

4.2.2 Retail Contestability

Allowing customers to choose their preferred gas retailer is an outcome of the Government's energy industry reform process, and in accordance with Western Australia's obligations under the CPA and the agreed COAG National Energy Policy.

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

The phased implementation of gas contestability has been an ongoing process in the Western Australian gas market. On 1 January 2002 the market became contestable for those customers consuming 1TJ or more of natural gas per annum, such as hospitals, hotels, restaurants, laundries and bakeries. The last stage of legal contestability occurred on 1 July 2002, when legal impediments to access for over 440,000 small business and household customers consuming less than 1TJ per annum were removed.

However, effective FRC in gas was achieved on 31 May 2004, with the implementation of the retail market scheme operated by Retail Energy Market Company Limited. As a result, all gas customers in Western Australia are now contestable.

A number of new customer protection mechanisms were also put in place on 31 May 2004 to ensure that competition benefits small use customers (those that consume less than 1 TJ/a), including:

- the Gas Industry Ombudsman;
- the Gas Marketing Code of Conduct; and
- regulations for customer contracts.

In addition, supplier of last resort (SOLR) arrangements are currently being finalised for Western Australia to ensure that small use customers continue to receive gas supply in the event that their retailer cannot provide them with gas. SOLR Regulations are currently being developed, and are expected to be proclaimed by the third quarter of 2005. These regulations will ensure that SOLR arrangements are put in place once an alternative retailer enters the Western Australian gas market at the small use customer level.

4.2.3 Access

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

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

Following the transfer of regulatory functions, owners of covered pipelines are now required to lodge access arrangements with the ERA within prescribed time limits. A number of proposed access arrangements for pipelines covered by the Code have been lodged with the ERA for approval. The ERA will review each proposal and conduct public submissions to make informed decisions as to whether to approve or request amendments to proposed access arrangements.

4.2.4 Regulation

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

4.2.5 Legislation Review and Reform

4.2.5.1 Submerged lands legislation

The NCP review of Western Australia's *Petroleum (Submerged Lands) Act 1982* was completed as part of the Submerged Lands Review of the Commonwealth and State submerged lands acts. The recommendations of the Review that require legislative change (permit renewal terms and retention lease re-evaluation) have been incorporated into a larger petroleum amendment package approved by Government in September 2003.

These amendments were incorporated into the Petroleum Legislation Amendment Bill 2004, which is currently being drafted.

4.2.5.2 On-shore acreage management legislation

The *Petroleum Act 1967* and Regulations were reviewed in 2002. The findings of the review were agreed to by the Expenditure Review Committee and subsequently endorsed by Government in February 2003.

The recommendations of the Review that require legislative change (permit renewal terms and retention lease re-evaluation) have been incorporated into the larger petroleum amendment package that is the Petroleum Legislation Amendment Bill 2004, a second draft of which is awaited.

4.2.6 Gas quality standards

In Western Australia all gas entering a gas distribution system must comply with the gas quality standards contained in the *Gas Standards (Gas Supply and System Safety) Regulations 2000.* The specification has a number of similarities to

the national standard but unlike the national standard specifies a higher heating value range.

The higher heating value range is considered important in Western Australia as it forms the basis for billing customers on an energy basis (megajoules/m^3) and the recent interconnection of a second transmission pipeline to the gas distribution system supplying gas of a different higher heating value has reinforced the need for the higher heating value range to be specified. The commingling of the two gases in the distribution system results in the need to derive a higher heating value for billing purposes based on the measured higher heating value of each gas.

No specification is called up in legislation to cover gas quality in transmission pipelines. However, transmission pipelines covered by an Access Arrangement include a gas quality specification in the Access Arrangement. Unlike the national standard which specifies total inerts (does not distinguish between carbon dioxide and nitrogen) the gas quality specifications contained in the Access Arrangements limit the amount of carbon dioxide, as this can have a detrimental effect on gas used for feedstock purposes in industrial processes. A number of haulage contracts also specify the higher heating value range.

Discussions with industry on the appropriateness of adopting the national standard have confirmed the view that Western Australia is reluctant to amend its local standards unless the national standard takes account of the differences. However, it is understood by government that should Western Australian pipelines interconnect in the future with interstate pipelines, it would need to review and, where appropriate amend the local standards to reflect the national standard.

Western Australia does not consider that adopting the national standard in the future would have a material effect on the performance of gas appliances operating in Western Australia but could in the longer term restrict some potential producers from being able to ship their gas.

4.3 RAIL

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

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

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

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

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

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

The Western Australian Government continues to refine the Code to improve its effectiveness and efficiency. A full review of the Code is currently in progress.

4.4 ECONOMIC REGULATION

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

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

duplication of fixed and operational costs and consolidating scarce regulatory expertise.

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

Functions of the ERA include:

- independently regulating access to significant economic infrastructure under industry specific access regimes;
- independently granting industrial licences and ensuring compliance with terms and conditions applying to licences:
- water industry licensing functions were transferred to the ERA effective from 1 January 2004;
- gas industry licensing functions were transferred on 19 March 2004, in preparation for the implementation of FRC in May 2004;
- electricity industry licensing functions were transferred to the ERA on 1 January 2005, following the development of the regime as part of the current electricity reform process; and
- making expert recommendations to Government about tariffs and charges for Government monopoly services, and any other matters requested by the Government.

The Governor has appointed Mr Lyndon Rowe to the position of Chairman for a five-year tenure, and Mr Chris Field and Dr Ken Michael AM have been appointed as part-time Members of the governing body. These appointments took effect as of 8 March 2004.

The first pricing inquiry by the ERA commenced in March 2005 and is in relation to urban water and wastewater prices. The Government is required to conduct this inquiry to ensure compliance with COAG pricing principles. The final report is due to be released by September 2005.

5 OTHER RELATED REFORMS

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

5.1 WATER

The Water Legislation (Competition Policy) Amendment Bill 2005, which reforms seven pieces of outstanding water industry legislation, passed through the Legislative Assembly on 30 June 2005. It will be presented to the Legislative Council when Parliament resumes on 16 August where no delays are expected.

The reviews contained no recommendations for amendments to regulations, only by-laws which require Ministerial approval and tabling in Parliament. Subsequently, the three outstanding by-laws requiring amendment were gazetted on 26 April 2005 and then tabled in the Legislative Assembly on 3 May 2005 and the Legislative Council on 4 May 2005, with no amendments.

The only remaining piece of water industry legislation yet to be reformed is the *Water Boards Act 1904*. Currently the Office of Water Policy is liaising with the Minister Assisting the Minister for Water Resources to seek approval to draft the required amendments.

5.2 ROAD TRANSPORT

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

Outstanding reforms requiring implementation in Western Australia are:

- introduction of the National Drivers' Licence Classifications; and
- the One Driver/One Licence reforms.

These are to be achieved via amendments to the *Road Traffic Act 1974* and Regulations, contained in the *Road Traffic Amendment Bill 2005*. The Bill was introduced into Parliament on 30 June 2005.

Drafting of the amendment Bill had been delayed pending completion of a licensing functional review to determine, amongst other matters, where administrative responsibility for licensing functions should most appropriately reside.

ATTACHMENT 1: THE NCC'S 2005 ASSESSMENT FRAMEWORK FOR WESTERN AUSTRALIA

Part A: Energy

A1 Electricity

State and Territory governments' electricity commitments under the NCP arise from the Agreement to Implement the National Competition Policy and Related Reforms, the Competition Principles Agreement (CPA) and other agreements on related reforms for the electricity sector (electricity agreements). The CPA commitments relating to structural reform and legislation review are relevant to all jurisdictions.

A1.1 Structural reform

In its 2004 assessment, the Council noted that Western Australia had made substantial progress in implementing electricity sector reform. Such reforms included the development of a wholesale market, third party access regime, industry licensing regime and consumer protection measures. However, Western Australia failed to implement an essential aspect of the reform package recommended by the Electricity Reform Task Force and accepted by the government — namely, the structural separation of Western Power into generation, networks and retail entities in the south west interconnected system, and the establishment of a regional power entity for Western Power's north west interconnected system and non interconnected system. The Task Force referred to this reform measure as being the most significant and of central importance to the overall industry reform package.

The government has stated that it continues to be committed to the disaggregation of Western Power and intends to reintroduce the disaggregation legislation following the next election. The passage of the legislation and the implementation of the restructuring reforms would satisfy Western Australia's CPA clause 4 obligations. The Council will review the position in its 2005 NCP assessment.

A2 Gas

State and Territory governments' gas commitments under the NCP arise from the Agreement to Implement the National Competition Policy and Related Reforms, the Competition Principles Agreement (CPA) and other agreements on related reforms for the gas sector (gas agreements).

The NCP gas reform program has been substantially completed, with only a few issues remaining outstanding for the 2005 NCP assessment.

A2.1 Legislation review and reform

Submerged lands legislation

All States and the Northern Territory have petroleum (submerged lands) legislation that forms part of a national scheme that regulates exploration for, and the development of, undersea petroleum resources. These Acts were reviewed in 1999-2000. The Australian and New Zealand Minerals and Energy Council Ministers endorsed the national review report, which was made public in March 2001, following consideration by CoAG.

The two specific legislative amendments were incorporated into the Australian Government's *Petroleum (Submerged Lands) Amendment Act 2002,* which was enacted in October 2002. In the 2004 assessment, the Council noted that the government expected to introduce the new Offshore Petroleum Act in early 2005. All relevant jurisdictions indicated that they would amend their legislation to reflect the 2002 amendments, but most had not done so as at the time of the 2004 assessment. The Council seeks advice from all relevant jurisdictions on their progress in reforming their submerged lands legislation.

On-*shore acreage management legislation*

Western Australia reviewed the *Petroleum Act 1967* and Petroleum Regulations 1987. It proposed to further review the Act for consistency with its submerged lands legislation once the amendments to that legislation are completed. The Council noted in its 2004 assessment that Western Australia had committed to completing this area of reform.

The Council seeks the advice of Western Australia on progress with reforming acreage management legislation.

A2.2 Gas quality standards

The Australian gas industry has been developing a national gas quality standard so processed gas can move through all interlinked pipeline networks without adversely affecting pipelines or gas appliances. The Council considers that such a standard is important to achieving a national gas market through the removal of barriers to interstate gas trade, and to implementing free and fair trade in gas.

The Council seeks advice on progress made in implementing the standard, including details on how the standard is to be implemented and a timetable for full implementation.

Part B: Other commitments

B1 Road transport

Matter	***Information sought***
Driver licensing reforms *One driver/one licence*	Has Western Australia introduced and passed amendments in these areas?

B2 Competitive neutrality

Matter	***Information sought***
Competitive neutrality complaints	Please provide information on complaints received and complaints resolved during 2004-05.
Coverage and processes	Describe any changes to the coverage of competitive neutrality principles or complaints handling processes. Has legislation been introduced that will clarify the powers of universities to engage in commercial operations and to be subject to Western Australia's complaints processes? Provide an update on the timing of the review of radiation oncology services. Does Western Australia propose to undertake a competitive neutrality review of the Eastern Goldfields Transport Board?

B3 Priority legislation review and reform

B3.1 Specific penalties

Title of legislation	*Information sought*
Retail Trading Hours Act 1987	Western Australia is the only jurisdiction to heavily restrict shopping hours. The Australian Government imposed a permanent deduction of 10 per cent of competition payments in 2003-04 and 2004-05. The state has not released a review report or provided a robust public interest case for the restrictions. Provide an update on the government's policy on this matter.
Liquor Licensing Act 1988	The Act provides for a needs test in consideration of liquor licence applications and for only hotels to trade on Sundays. The Australian Government imposed a 5 per cent permanent deduction of 2003-04 competition payments because reforms were not proposed until 2005, and a subsequent 5 per cent deduction of 2004-05 competition payments because Western Australia announced in March 2004 that it would not proceed with the reforms. Provide an update on the review which the government appointed in spring 2004. Is the government proposing to introduce a compliant reform program?
Marketing of Potatoes Act 1946	Western Australia regulates the supply of potatoes for fresh consumption and fixes their price. The Australian Government imposed a 5 per cent permanent deduction of 2003-04 competition payments because the 2003 review and the government's arguments for retaining the restrictions were not consistent with NCP obligations. Western Australia foreshadowed legislative changes that would reduce the costs of the restrictions, but not remove them. The Australian Government imposed a permanent deduction of 5 per cent of 2004-05 competition payments for continued non-compliance. Does the government intend to remove the supply and marketing controls?

B3.2 Suspension pool

For the 2003 assessment, the Council recommended a suspension of 20 per cent of 2003-04 competition payments for remaining legislation review compliance failures. At the time of the 2004 assessment, the Government had made only modest progress in addressing the outstanding items. Accordingly, only one quarter (5 percentage points) of the suspension pool funds was released and three quarters (15 percentage points) deducted permanently. In addition, a further suspension of 15 per cent of the state's 2004-05 competition payments was imposed — 5 percentage points of this suspension attach specifically to the state's failure to complete its general health practitioner reforms despite repeated undertakings that this would occur by 30 June 2004.

Title of legislation	***Information sought***
Agricultural and Veterinary Chemicals (Western Australia) Act 1995	Interjurisdictional process. Has this matter been progressed further?
Agricultural Produce (Chemical Residues) Act 1983; Aerial Spraying Control Act 1966;Veterinary Preparations and Animal Feeding Stuffs Act 1976	Have the legislative amendments been passed?
Grain Marketing Act 1975	Will Western Australia amend the Ministerial guidelines to improve the predictability of grain export licensing arrangements? (Further information may be sought following analysis of the review of the Act by RSM Bird Cameron).
Health Act 1911 and Food Regulations under the Health Act	Provide an update on the progress of the new Food Bill.
Veterinary Surgeons Act 1960	Has the amending legislation been introduced and passed?
Fish Resources Management Act 1994	Does the government intend to remove the limit on the number of licences authorising the export processing of rock lobsters? Please provide an update on progress of the review of management of the rock lobster fishery, which is looking at the benefits and costs of replacing pot entitlements with individual transferable quota.
Pearling Act 1990	Detail progress in removing all restrictions not clearly shown to be in the public interest.
Jetties Act 1926 and Regulations; *Lights (Navigation) Protection Act 1938; Marine and Harbours Act 1981* and Regulations*; Shipping and Pilotage Act 1967* and Regulations*; Western Australian Marine Act 1982*	Describe progress in redrafting and introducing the Maritime Bill, and the significant changes implemented by that Bill.

Title of legislation	***Information sought***
Transport Co-ordination Act 1966	Describe progress in introducing tender arrangements for the provision of air services.
Health practitioner legislation*:* *Dental Act 1939; Dental Prosthetists Act 1985; Chiropractors Act 1964; Optical Dispensers Act 1966; Optometrists Act 1940; Nurses Act 1992; Osteopaths Act 1997; Physiotherapists Act 1950; Podiatrists Registration Act 1984; Psychologists Registration Act 1976; Occupational Therapists Registration Act 1980*	Provide information on the government's consideration of the core practices review and an update on template legislative reforms incorporating the review's recommendations.
Medical Act 1894	Update progress in drafting and introducing the Medical Practitioners Registration Bill.
Poisons Act 1964; Health Act 1911 (part VIIA) *(*drugs and poisons)	Interjurisdictional process. Has this matter progressed further?
Pharmacy Act 1964	Have pharmacy reforms to liberalise ownership restrictions been implemented? Is there a prospect that the reforms will meet the standard set by the CoAG national review process?
Legal Practitioners Act 1893	Interjurisdictional process with respect to professional indemnity insurance. Has this matter progressed further? What is the status of the pending reforms in the State Administrative Tribunal Bill?
Auction Sales Act 1973	Has the Department of Consumer Protection finalised the general review of the Act, and have the licensing arrangements been removed?
Travel Agents Act 1985 and Regulations	Interjurisdictional process. Has Western Australia completed legislative changes arising from the national review?
Settlement Agents Act 1981	Has Western Australia introduced and passed the amending legislation that was being drafted when the 2004 NCP assessment was completed?
Pawnbrokers and Second-hand Dealers Act 1994	Provide an update on the progress of the Pawnbrokers and Second-hand Dealers Amendment Bill.
Debt Collectors Licensing Act 1964	Provide an update on the government's progress in drafting and implementing legislative amendments in line with the recommendations of the 2003 NCP review.
Employment Agents Act 1976	Provide an update on implementation of recommendations of the 2003 NCP review.
Hairdressers Registration Act 1946	Has there been any change in the government's policy on hairdresser licensing?

Title of legislation	***Information sought***
Real Estate and Business Agents Act 1978	Provide an update on the government's progress in drafting and implementing legislative amendments in line with the recommendations of the 2003 NCP review.
Petroleum Products Pricing Amendment Act 2000; Petroleum Legislation Amendment Act 2001	Does the government intend to instigate an independent review of the impacts of the competition restrictions? (Apart from the ACCC's concerns, the RACV commenting on capital city petrol price volatility, recently claimed that WA's fuelwatch program leads to higher petrol prices.)
Retirement Villages Act 1992	Provide an update on the government's progress in drafting and implementing legislative amendments in line with the recommendations of the 2002 NCP review.
Credit (Administration) Act 1984	What progress has been made in implementing the recommendations of the review, which the government endorsed in 2003?
Weights and Measures Act 1915	Interjurisdictional process. Has this matter progressed further?
Gaming Commission Act 1987 (exclusive licences)	Is the government considering any changes to its lottery licensing arrangements?
Betting Control Act 1954; *Totalisator Agency Board Betting Act 1960*; *Racing Restrictions Act 1917*; *Racing Restrictions Act 1927*	Is the government considering any changes to the arrangements which provide for an exclusive licence for off-course totalisator betting?
Gaming Commission Act 1987 (minor gambling)	Has the government completed its consideration of the 1998 review recommendations?
Town Planning and Development Act 1928; Western Australian Planning Commission Act 1985; Metropolitan Region Town Planning Scheme Act 1959	Provide an update on the progress of the amending Planning and Development Bill and Planning and Development (Consequential and Transitional Provisions) Bill.
Local Government (Miscellaneous Provisions) Act 1960 and Building Regulations 1989	What progress has the government made in introducing amending legislation?
Architects Act 1921	Provide an update on the progress of Architects Bill 2003.
Water legislation	Detail progress made to implement the recommended reforms to 19 water industry regulatory instruments. See section B3.2.1 below.

B3.2.1 Outstanding water legislation review and reform obligations

Western Australia listed 35 water industry regulatory instruments for NCP review. It completed reviews of 32. Of the remaining three, Western Australia commenced a review of the Health (Treatment of Sewerage and Disposal of Effluent and Liquid Waste) Regulations 1993 and proposes to repeal two without review. The completed reviews recommended repeal of one instrument, reform of 18 others and no change in 13 cases. At the time of the 2003 NCP assessment, the state was still to implement the recommended reforms to 19 water industry regulatory instruments.

For the 2004 NCP assessment, Western Australia reported that it had completed none of the 19 reforms. The government had proposed to reform seven of the 19 instruments via the Acts Amendment and Repeal (Competition Policy) Bill in 2002, later delayed to 2003. Parliamentary Counsel subsequently decided that the scope of the water amendments required an industry-specific Bill. Accordingly, Cabinet approved the redrafting of the amendments as the Water Industry Legislation Amendment Bill in February 2004. Western Australia proposed to introduce the Bill in the autumn sitting of Parliament in 2004, but did not meet this timeframe. In July 2004, Western Australia provided the Council with a draft explanatory memorandum and summary of the Bill, which it expected to introduce to Parliament in late 2004.

Notwithstanding that the 2005 assessment of jurisdictions' compliance with NCP water commitments is to be conducted by the National Water Commission (see covering letter), Western Australia is the only jurisdiction to have not met its CPA clause 5 obligations for the review and reform of water industry legislation. The lack of progress in this area contributed to Western Australia's pool suspensions in the 2003 and 2004 NCP assessments.

B4 Non-priority legislation review and reform

The Council is seeking an update of the status of non-priority legislation in which review and reform activity was incomplete at the time of the 2004 assessment. Progress in completing non-priority legislation will be taken into consideration by the Council when assessing jurisdictions' overall performance in meeting their NCP obligations.

The Council's understanding of the status of non-priority legislation is detailed in the Legislation Review Compendium, Fifth Edition, February 2004 (www.ncc.gov.au/publication.asp?publicationID=186&activityID=36). Please detail any further progress in relation to review and reform activity for the following outstanding non-priority legislation:

- Agricultural Products Act 1929 and Regulations
- Artificial Breeding of Stock Act 1965
- Beekeepers Act 1963

- Caravan Parks and Camping Grounds Act 1995
- Cattle Industry Compensation Act 1965
- Charitable Collections Act 1946 and Regulations
- Coal Industry Superannuation Act 1989
- Consumer Credit (Western Australia) Act 1996
- Cooperative and Provident Societies Act 1903
- Fertilisers Act 1977
- Health (Asbestos) Regulations 1992
- Health (Cloth Materials) Regulations 1973
- Health (Construction Work) Regulations 1973
- Health (Drugs and Allied Substances) Regulations 1961
- Health (Pesticides) Regulations 1956
- Health (Pet Meat) Regulations 1990
- Health (Public Buildings) Regulations 1992
- Health (School Dental Therapists) Regulations 1974
- Health Act (Swimming Pools) Regulations 1964
- Hospitals (Licensing and Conduct of Private Psychiatric Hostels) Regulations 1997
- Hospitals (Service Charges) Regulations 1984
- Hospitals and Health Services Act 1927
- Law Reporting Act 1981
- Local Government Act 1995
- Marine (Hire and Drive Vessels) Regulations 1983
- Mutual Recognition (Western Australia) Act 1995
- Offensive Trades (Fees) Regulations 1976
- Petroleum Products Subsidy Act 1965 and Regulations
- Piggeries Regulations 1952

- Planning legislation: Town Planning and Development Act 1928, Western Australian Planning Commission Act 1985, Metropolitan Region Town Planning Scheme Act 1959

- Plant Pests and Diseases (Eradication) Fund Act 1996 [previously the Skeleton Weed and Resistant Grain Insects (Eradication Funds) Act 1974]

- Seeds Act 1981 and Regulations

- Small Business Guarantees Act 1984 and Regulations

- Stipendiary Magistrates Act 1957

- Stock (Identification and Movement) Act 1970

- Street Collections Regulation Act 1940 and Regulations

- Suitors Fund Act 1964

- Trustees Companies Act 1987

- Western Australian Marine (Hire and Drive Vessels) Regulations 1983

- Western Australian Marine Act 1982

- Western Australian Reproductive Technology Council (Nominating Bodies) Regulations 1992 and Directions

B5 New legislation and gatekeeping

CPA clause 5(5) obliges governments to require all proposals for new legislation that restricts competition to be accompanied by evidence that the legislation is consistent with the clause 5(1) guiding principle.

The Council considers the CPA clause 5(5) obligation to mean that governments should have in place legislation gatekeeping arrangements which maximise the opportunity for regulatory quality. The Council will consider the effectiveness of these arrangements in the 2005 assessment.

Please advise of any recent changes relating to the roles and responsibilities of gatekeeping mechanisms. In particular, the Council seeks information on any changes relating to:

- the scope of legislation containing non-trivial restrictions on competition that is subject to formal regulatory impact assessment (eg new and amended primary and subordinate legislation*)*

- published guidelines for conducting regulation impact analysis and the extent to which the guidelines must be followed by government bodies that review or make regulations

- the extent to which impact assessment guidelines embody the CPA clause 5 guiding principle

- The gatekeeper, including
  - its independence
  - how it advises agencies on the conduct of regulatory impact assessments
  - its powers to examine regulatory impact assessments and to advise Cabinet on the adequacy of the analysis
  - its monitoring and reporting of compliance
  - its processes to ensure that agencies adhere to gatekeeping requirements.

The Council may undertake its own checks of compliance by examining whether particular pieces of new legislation meet the CPA clause 5(1) guiding principle. Governments are invited to raise with the Council, in advance, any proposed legislation that might have clause 5(5) implications.

ATTACHMENT 2: 2005 RETAIL TRADING HOURS REFERENDUM QUESTIONS

Question One:

Do you believe that the Western Australian community would benefit if trading hours in the Perth Metropolitan Area were extended to allow general retail shops to trade until 9pm Monday to Friday ?

Question Two:

Do you believe that the Western Australian community would benefit if trading hours in the Perth Metropolitan Area were extended to allow general retail shops to trade for 6 hours on Sunday ?

ATTACHMENT 3: JURISDICTION OF THE STATE ADMINISTRATIVE TRIBUNAL

A number of boards, tribunals and other bodies previously reviewed as requiring reform in line with NCP have had their jurisdiction to hear disciplinary matters taken over by the State Administrative Tribunal (SAT). The SAT makes disciplinary decisions and reviews licensing decisions for the following occupations:

- architects;
- builders;
- chiropractors;
- credit providers;
- debt collectors;
- dental prosthetists;
- dentists;
- doctors;
- employment agents;
- electricians;
- finance brokers;
- gas fitters;
- hairdressers;
- land surveyors;
- land valuers;
- legal practitioners;
- motor vehicle dealers;
- motor vehicle driving instructors;
- nurses;
- occupational therapists;
- optical dispensers;

- optometrists;
- osteopaths;
- painters;
- pawnbrokers and second hand dealers;
- pharmacists;
- physiotherapists;
- plumbers;
- podiatrists;
- psychologists;
- providers of services related to assisted reproductive technology, and radiation technology;
- real estate and business agents;
- security agents;
- settlement agents;
- travel agents; and
- veterinary surgeons.