



SECOND SESSION OF THE THIRTY-SIXTH PARLIAMENT

**REPORT OF THE
STANDING COMMITTEE ON UNIFORM
LEGISLATION AND GENERAL PURPOSES**

**IN RELATION TO THE
ACTS AMENDMENT AND REPEAL
(COMPETITION POLICY) BILL 2002**

Presented by Hon Adele Farina MLC (Chairman)

Report 10
June 2003

STANDING COMMITTEE ON UNIFORM LEGISLATION AND GENERAL PURPOSES

Date first appointed:

April 11 2002

Terms of Reference:

The following are extracts from Schedule 1 of the Legislative Council Standing Orders:

“7. Uniform Legislation and General Purposes Committee

- 7.1 *A Uniform Legislation and General Purposes Committee* is established.
- 7.2 The Committee consists of 3 members with power in the Committee to co-opt 2 additional members for a specific purpose or inquiry.
- 7.3 The functions of the Committee are –
- (a) to consider and report on bills referred under SO 230A;
 - (b) of its own motion or on a reference from a minister, to consider or review the development and formulation of any proposal or agreement whose implementation would require the enactment of legislation made subject to SO 230A;
 - (c) to examine the provisions of any instrument that the Commonwealth has acceded to, or proposes to accede to, that imposes an obligation on the Commonwealth to give effect to the provisions of the instrument as part of the municipal law of Australia;
 - (d) to consider and report on any matter referred by the House.
- 7.4 For a purpose relating to the performance of its functions, the Committee may consult with a like committee of a House of the parliament of the Commonwealth, a state or a territory, and New Zealand and similarly, may participate in any conference or other meeting.”

Members as at the time of this inquiry:

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LIST OF ABBREVIATIONS

1996 Position Paper	Working Party of Representatives of Scrutiny of Legislation Committees throughout Australia, <i>Scrutiny of National Schemes of Legislation Position Paper</i> , October 1996
Bill	Acts Amendment and Repeal (Competition Policy) Bill 2002
ACCC	Australian Competition and Consumer Commission
CCA	Conduct Code Agreement
COAG	Council of Australian Governments
Committee	Standing Committee on Uniform Legislation and General Purposes
Council	Legislative Council of Western Australia
CPA	Competition Principles Agreement
Hilmer Report	<i>National Competition Policy: Report by the Independent Committee of Inquiry</i>
Implementation Agreement	Agreement to Implement Competition Policy and Related Reforms
NCC	National Competition Council
NCP	National Competition Policy

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**REPORT OF THE STANDING COMMITTEE ON UNIFORM LEGISLATION AND GENERAL
PURPOSES**

IN RELATION TO THE

ACTS AMENDMENT AND REPEAL (COMPETITION POLICY) BILL 2002

1 REFERENCE

- 1.1 On April 10 2003 the Acts Amendment and Repeal (Competition Policy) Bill 2002 (Bill) stood referred to the Uniform Legislation and General Purposes Committee (Committee) pursuant to Standing Order 230A. Standing Order 230A(4) requires that the Committee report to the Legislative Council (Council) within 30 days of the first reading of the Bill, being May 9 2003.
- 1.2 On May 6 2003 the Council agreed, on report from the Committee, to extend the report back date to June 11 2003.
- 1.3 Pursuant to Standing Order 230A(5) the policy of the Bill is not a matter for inquiry by the Committee.

2 INQUIRY PROCEDURE

- 2.1 The Committee was aware that the Bill would be subject to Standing Order 230A when it was introduced into the Council and likely to be referred to the Committee. In anticipation of such referral the Committee, of its own motion, commenced preliminary research into the background of the Bill.¹ The Committee resolved at its meeting on March 5 2003 to write to the Treasurer seeking specific information about a number of aspects of the Bill.
- 2.2 The Committee received a response from the Treasurer to its request for information by way of a letter dated March 28 2003.
- 2.3 At its meeting on April 16 2003 the Committee resolved to conduct a hearing on the Bill with representatives from the Western Australian Department of Treasury and Finance and representatives from agencies and departments affected by the Bill.
- 2.4 The following people provided a briefing on the Bill at the Committee's hearing on April 28 2003:

¹ The Committee's Term of Reference 7.3(b) states "*The functions of the Committee are...(b) of its own motion or on a reference from a minister, to consider or review the development and formulation of any proposal or agreement whose implementation would require the enactment of legislation made subject to SO 230A;*"

- Ms Katy Ashforth, Manager, Legislation, Department of Agriculture;
- Mr Ian Bowden, Legal and Legislation Officer, Fire and Emergency Services Authority of Western Australia;
- Mr Barry Cribb, Manager, Land Boundary Services, Department of Land Administration;
- Mr Gary Fenner, Valuer General;
- Mr Gordon Gray, Legal/Policy Officer, Department of Consumer and Employment Protection;
- Mr Robert Halliday, Chief Executive Officer, Perth Market Authority;
- Mr Simon Hancocks, Senior Policy Officer, Department of Conservation and Land Management;
- Mr Gregory Holland, Director, Management Services Centre, Edith Cowan University;
- Mr Trevor Maughan, Manager, Legislative and Legal Services, Department of Planning and Infrastructure;
- Dr David Morrison, Director Structural Policy, Department of Treasury and Finance;
- Mr Gary Newcombe, Director, Policy and Education, Department of Consumer and Employment Protection;
- Mr Gary Stokes, Chief Executive Officer, State Supply Commission; and
- Mr Neil Thomson, Principal Policy Officer, Competition Policy Branch, Department of Treasury and Finance.

2.5 The Committee thanks these witnesses for their assistance.

2.6 Details of the inquiry were also placed on the parliamentary website.

3 UNIFORM LEGISLATION

3.1 The Bill is an example of 'uniform legislation'. Uniform legislation arises out of national uniform schemes of legislation and intergovernmental agreements.

Scrutiny of uniform legislation in the Western Australian Parliament

- 3.2 The scrutiny of uniform legislation is not new to the Western Australian Parliament. Since 1991 both the Council and Legislative Assembly have established procedures to assist Parliament in the scrutiny of national schemes of legislation:
- a) In the Council the Standing Orders were amended to provide for a 120-day delay before the second reading debate on a bill may resume in the House. In 1997 the Council amended the terms of reference for the (former) Constitutional Affairs Committee and the Standing Orders to enable automatic referral of such bills to that committee for inquiry and report within 30 days.
 - b) In the Legislative Assembly a committee was appointed specifically to scrutinise uniform legislation – the Standing Committee on Uniform Legislation and Intergovernmental Agreements. That committee existed until the Thirty-Sixth Parliament, when it was not reappointed as part of a review of the Legislative Assembly committee system.
- 3.3 More recently during the Thirty-Sixth Parliament until the appointment of the Committee, the scrutiny of uniform legislation fell within the terms of reference for the Legislative Council Standing Committee on Legislation. In addition, the relevant Legislative Council Standing Order (Standing Order 230A) was amended to consolidate matters relevant to uniform legislation and to facilitate automatic referral of such bills to the Committee for inquiry and report within 30 days.

Legislative structures

- 3.4 National legislative schemes have been addressed in a 1996 Position Paper on the Scrutiny of National Schemes of Legislation by the Working Party of Representatives of Scrutiny Committees throughout Australia (1996 Position Paper). The 1996 Position Paper emphasises that it does not oppose the concept of legislation with uniform application in all jurisdictions across Australia. It does, however, question the mechanisms by which those uniform legislative schemes are made into law and advocates the recognition of the importance of the institution of Parliament.
- 3.5 A common difficulty with most forms of national scheme legislation is that any proposed amendments may be met by an objection from the Executive that consistency with the legislative form agreed among the various Executive Governments is a 'given'.²

² For example, refer to the Working Party of Representatives of Scrutiny of Legislation Committees throughout Australia, *Scrutiny of National Schemes of Legislation Position Paper*, October 1996, pp 7 – 12.

- 3.6 National legislative schemes can take a number of forms. Nine different categories of legislative structures promoting uniformity in legislation, each with a varying degree of emphasis on national consistency or uniformity of laws and adaptability, have been identified. The legislative structures are summarised in Appendix 1 to this report.³

Scrutiny principles

- 3.7 One of the recommendations of the 1996 Position Paper was the adoption of the following uniform scrutiny principles:

- Does the Bill trespass unduly on personal rights and liberties?⁴

and

- Does the Bill inappropriately delegate legislative powers?⁵

- 3.8 Although not adopted formally by the Council as part of the Committee's terms of reference, the principles can be applied as a convenient framework for the scrutiny of uniform legislation.

4 STRUCTURE OF THE REPORT

- 4.1 The Bill contains 59 clauses in 15 Parts.
- 4.2 The Committee notes that on Supplementary Notice Paper Number 162, Issue Number 1⁶, there are two amendments standing in the name of Hon Peter Foss MLC which, if moved and agreed to, will result in a further clause being inserted into the Bill and, as a consequence, the long title being amended.
- 4.3 The further clause is new clause 4, which will have the effect of repealing the *Hairdressers Registration Act 1946*. The long title would be amended to include the *Hairdressers Registration Act 1946* in the list of Acts to be repealed by the Bill.
- 4.4 The Committee has provided comment on these proposed amendments to the Bill in section 7 of this report.

³ Ibid. Also see reports of the Parliament of Western Australia, Legislative Assembly Standing Committee on Uniform Legislation and Intergovernmental Agreements.

⁴ For example: strict liability offences, reversal of the onus of proof, abrogation of the privilege against self-incrimination, inappropriate search and seizure powers, decision-making safeguards (that is: written decisions and reasons for decisions), personal privacy, decisions unduly dependent on administrative decisions.

⁵ For example: 'Henry VIII clauses', insufficient parliamentary scrutiny of the exercise of legislative power.

⁶ Dated April 14 2003.

4.5 Details of selected clauses of the Bill are provided at section 6 of this report.

5 BACKGROUND TO THE ACTS AMENDMENT AND REPEAL (COMPETITION POLICY) BILL 2002

5.1 The Committee refers readers to the Western Australian Department of Treasury and Finance website (www.treasury.wa.gov.au and follow the links from 'Treasury' to 'Competition Policy' to 'Publications') which contains links to key National Competition Policy (NCP) documents.⁷

National Competition Policy: Report of the Independent Committee of Inquiry - Hilmer Report

5.2 In October 1992 Commonwealth, State and Territory Heads of Government, through the Council of Australian Governments (COAG), commissioned the Independent Committee of Inquiry into a National Competition Policy for Australia. The Independent Committee of Inquiry was chaired by Professor Frederick Hilmer.

5.3 The Independent Committee of Inquiry presented its report, *National Competition Policy: Report by the Independent Committee of Inquiry* (which has become known as the Hilmer Report) in August 1993. The immediate origins of the NCP are to be found in the Hilmer Report.

5.4 The essence of the Hilmer Report was that competition ought to be applied nationally in a consistent fashion, reflecting the fact that State and Territory boundaries were less significant economically and that government businesses were increasingly operating in a commercial fashion.⁸

5.5 Specifically, the Hilmer Report made recommendations in six policy areas:

- a) extension of the reach of the *Trade Practices Act 1974* (Cth) to unincorporated businesses and State and Territory government businesses;
- b) extension of prices surveillance to State and Territory government businesses to deal with those circumstances where all other competition policy reforms had proved inadequate;
- c) application of competitive neutrality principles so that government businesses do not enjoy a competitive advantage simply as a result of public sector ownership;
- d) restructuring of public sector monopoly businesses;

⁷ Current as at May 30 2003.

⁸ Western Australia Treasury, *An Introduction to the National Competition Policy - Executive Summary*, Fourth Draft, May 28 1998, p x.

- e) reviewing all legislation which restricts competition; and
- f) providing for third party access to nationally significant infrastructure.⁹

5.6 The Hilmer Report was followed by an extensive period of consultation with business, unions and other stakeholders. The COAG meeting on April 11 1995 endorsed a national competition reform package which was derived from the recommendations of the Hilmer Report, and included reforms to the electricity, gas, water and road transport industries which had been previously agreed by governments.

The National Competition Policy Package

5.7 The NCP package comprises the following:

- a) *Competition Policy Reform Act 1995* (Cth) and State and Territory application legislation. The Western Australian legislation is the *Competition Policy Reform (Western Australia) Act 1996* (WA);
- b) Conduct Code Agreement (CCA);
- c) Competition Principles Agreement (CPA); and
- d) Agreement to Implement Competition Policy and Related Reforms (Implementation Agreement).

Competition Policy Reform Act 1995 (Cth) and Competition Policy Reform (Western Australia) Act 1996 (WA)

5.8 At the COAG meeting in April 1995 it was agreed that the Commonwealth Parliament should pass an Act applying the reforms at a federal level. This would be complemented by application legislation in each State and Territory jurisdiction, ensuring comprehensive national coverage.¹⁰

5.9 In 1995 the Commonwealth Parliament passed the *Competition Policy Reform Act 1995*, and in 1996 the Western Australian Parliament enacted the *Competition Policy Reform (Western Australia) Act 1996* which applied the national competition laws to this State.

5.10 At the same time, the Western Australian Parliament also enacted the *Competition Policy Reform (Taxing) Act 1996* which validated certain fees referred to in section

⁹ National Competition Council, *Compendium of National Competition Policy Agreements*, Second Edition, June 1998, pp 4-5.

¹⁰ Refer to the discussion of 'Structure 3' at Appendix 1 to this report.

37(3) of the *Competition Policy Reform (Western Australia) Act 1996* that could be a tax. In line with the Western Australian Constitution, this required a separate Act.¹¹

- 5.11 The Commonwealth *Competition Policy Reform Act 1995* and its application legislation in other State and Territory jurisdictions applied the competitive conduct rules of the Commonwealth *Trade Practices Act 1974* to all businesses, including unincorporated businesses and government businesses, both of which had previously been excluded from coverage. The range of areas covered by the Commonwealth *Trade Practices Act 1974* was also extended to include services as well as goods.
- 5.12 The Commonwealth *Competition Policy Reform Act 1995* also created new bodies with key roles in the NCP process in the forms of the Australian Competition and Consumer Commission (ACCC) and the National Competition Council (NCC).

Australian Competition and Consumer Commission

- 5.13 The ACCC was formed via a merger of the Trade Practices Commission and the Prices Surveillance Authority. It is responsible for general administration of NCP, including areas such as enforcement of general conduct rules, oversight of declaration under the access regime, prices oversight and authorisation. It also has an educative function in promoting awareness of competition.¹²

National Competition Council

- 5.14 The NCC has responsibility for making recommendations to governments on access regimes and prices oversight of State and Territory government businesses as well as carrying out reviews agreed to by participating jurisdictions. Its role is essentially that of providing policy advice and analysis to governments on competition matters.¹³

Conduct Code Agreement

- 5.15 The CCA sets out the basis for extending coverage of the Commonwealth *Trade Practices Act 1974* to all jurisdictions and processes to be followed for future modifications to competition law and appointments to the ACCC.

Competition Principles Agreement

- 5.16 The CPA sets out several principles for the application of competition policy. The principles fall into the following categories:

¹¹ Section 46(7) of the *Constitution Acts Amendment Act 1899* provides that “*Bills imposing taxation shall deal only with the imposition of taxation.*”

¹² Western Australia Treasury, *An Introduction to the National Competition Policy - Executive Summary*, Fourth Draft, May 28 1998, p xii.

¹³ Ibid.

- a) Competitive Neutrality: The essence of this principle is that a business should not be subjected to competitive advantage or disadvantage simply by virtue of government ownership, otherwise resource allocation decisions within the economy will not necessarily lead to the best outcomes.¹⁴ Governments agreed to publish a statement on competitive neutrality and to reform government businesses in ways consistent with competitive neutrality. The Western Australian Government published a policy statement on competitive neutrality in June 1996. The current Western Australian Government, through Cabinet, endorsed that policy statement in 2001.
- b) Legislation Review: Much anti-competitive activity has its roots in legislative constraints to competition and, accordingly, governments have agreed to review and, where appropriate, reform their legislation. Although this does not mean that all anti-competitive legislation must be amended, restrictions must be necessary and demonstrably in the public interest.¹⁵
- c) Structural Reform of Monopolies: Prior to introducing competition into public monopolies or privatisation, governments must undertake a review into issues associated with structural reform such as regulation, separation of competitive and monopoly elements, competitive neutrality, community service obligations and financial returns.¹⁶
- d) Prices Oversight: Governments have agreed to consider establishing independent sources of prices oversight of government business enterprises where these do not currently exist. As an alternative, governments may subject some or all of their publicly owned businesses to prices oversight by the ACCC. In some very limited circumstances, the NCC can declare particular government businesses for the purposes of prices surveillance.¹⁷
- e) Access Regimes: The access regime established by the Commonwealth *Competition Policy Reform Act 1995* allows for effective State access regimes to act as a substitute. The CPA provides guidelines on what is needed for a regime to be effective. The NCC has the responsibility of determining whether or not a regime is effective.¹⁸
- f) Local Government: Although local government is not a party to the CPA, it is binding upon local governments. States are required to prepare a policy

¹⁴ Ibid.

¹⁵ Ibid, p xiii.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Ibid.

statement outlining the application of the principles to local government within their jurisdiction.¹⁹ In June 1996 the Western Australian Government published a policy statement on how the NCP will affect local government. The current Western Australian Government, through Cabinet, endorsed that policy statement in 2001.

Agreement to Implement Competition Policy and Related Reforms

- 5.17 The Implementation Agreement sets out the financial assistance to be provided by the Commonwealth in relation to the competition policy reforms. It contains defined milestones in specific reform areas as well as a general requirement that all Agreements be implemented.
- 5.18 Under the Implementation Agreement, the Commonwealth Government undertook to make on-going NCP payments to each State and Territory over the period 1997-98 to 2005-06, subject to that State or Territory making satisfactory progress against their NCP and related reform obligations.
- 5.19 NCP payments are to be made in three tranches. Prior to each payment, the NCC assesses whether each State and Territory has met the conditions for the payments to commence.
- 5.20 There are two components to the NCP payments; namely, a guarantee to maintain the real per capita value of the Financial Assistance Grants pool available to each State and Territory and an indexed competition payment.
- 5.21 Payments to State and Local Governments through to 2005-06 will total over \$16 billion. In line with its share of Australia's population, Western Australia will receive around ten per cent of this, being \$1.6 billion. However the Implementation Agreement states that *"If a State has not undertaken the required action within the specified time, its share of the per capita component of the FAGs pool and of the Competition Payments pool will be retained by the Commonwealth."*²⁰ The Committee understands that it is more likely that a portion of the NCP payment will be retained.
- 5.22 In his second reading speech the Minister for Racing and Gaming representing the Minister for Consumer and Employment Protection stated that *"Furthermore, the National Competition Council has recently informed the Premier that Western Australia is required to complete all legislation reviews and pass any necessary*

¹⁹ Ibid.

²⁰ Agreement to Implement the National Competition Policy and Related Reforms, p 2.

legislative changes prior to June 2003, as the legislation review program will finish at that time."²¹

5.23 The Minister for Racing and Gaming also stated that "*The National Competition Council will conduct no further assessment of legislation reviews after June 2003, so passing omnibus legislation is critical to the State meeting its commitments.*"²²

5.24 At the Committee's hearing on April 28 2003, Dr Morrison, Director Structural Policy, Department of Treasury and Finance, advised that Western Australia had received all its payments in full, including those going back to 1997-98, when the competition payments were approximately \$21 million. He advised that there are various tranches of payments, and the current tranche means that the next payment will be worth approximately \$74 million a year to Western Australia.²³

Public Interest Guidelines for Legislation Review

5.25 Reviewing legislation for anti-competition restrictions is one of the major undertakings of the NCP. Over 1700 pieces of legislation have been identified by governments for review, extending across a range of industries and sectors.²⁴

5.26 At the Committee's hearing on April 28 2003 Dr Morrison advised that the public interest includes broad community goals such as social welfare, the environment and regional development as well as economic goals.²⁵

5.27 Clause 1(3) of the CPA sets out a non-exhaustive list of matters to be taken into account when assessing the public interest. These include:

- government legislation and policies relating to ecologically sustainable development;
- social welfare and equity considerations, including community service obligations;
- government legislation and policies relating to matters such as occupational health and safety, industrial relations and access and equity;

²¹ Second Reading Speech, Western Australia, *Parliamentary Debates (Hansard)*, Legislative Council, Thirty-Sixth Parliament Second Session, April 10 2003, p 6596.

²² Ibid.

²³ Transcript of evidence taken at Perth, April 28 2003, p 4.

²⁴ National Competition Council website: www.ncc.gov.au, accessed April 24 2003.

²⁵ Transcript of evidence taken at Perth, April 28 2003, p 3.

- economic and regional development, including employment and investment growth;
- the interests of consumers generally or of a class of consumers;
- the competitiveness of Australian businesses; and
- the efficient allocation of resources.

5.28 Clause 5(1) of the CPA contains the guiding principle behind legislation review. It provides that:

...legislation (including Acts, enactments, Ordinances or regulations) should not restrict competition unless it can be demonstrated that:

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

5.29 Clause 5(9) of the CPA sets out matters that should be taken into account in a legislation review. These are:

- a) clarify the objectives of the legislation;
- b) identify the nature of the restriction on competition;
- c) analyse the likely effect of the restriction on competition and on the economy generally;
- d) assess and balance the costs and benefits of the restriction; and
- e) consider alternative means for achieving the same result including non-legislative approaches.

5.30 In November 2001 the Western Australian Government, through the Competition Policy Unit, Department of Treasury and Finance, published new Public Interest Guidelines for Legislation Review.

5.31 The Public Interest Guidelines for Legislation Review state that *“In moving forward on competition policy it is fundamentally important that public interest considerations*

drive NCP reforms.”²⁶ It states that “...these new guidelines are designed to improve the practical application of the public interest test.”²⁷

5.32 The Public Interest Guidelines for Legislation Review also state that they “...overhaul the application of the public interest test in Western Australia to ensure that more emphasis is placed on the impacts on social and environmental objectives and better consideration is given to regional development. These new guidelines are unique in that they make it mandatory for all reviews to explicitly take account of public interest objectives when assessing the costs and benefits of reform.”²⁸

5.33 A flow chart of the legislation review process as set out in the Public Interest Guidelines for Legislation Review is attached at Appendix 2 to this report.

5.34 In his letter to the Committee dated March 28 2003 the Treasurer advised that the amendments to the various Acts contained in the Bill had been reviewed according to the processes outlined in the flow chart. The Treasurer advised that each of the reviews had been endorsed by the Minister responsible for Acts being amended and each review and corresponding ministerial recommendation had been considered by the Expenditure Review Committee and Cabinet before being incorporated into the Bill.

5.35 At its hearing on April 28 2003, the Committee was advised by Ms Ashforth and Dr Morrison that amendments may be moved in the Council affecting Part 11 of the Bill relating to the *Perth Market Act 1926*.²⁹ Refer to paragraphs 6.40 to 6.52 of this report for a discussion on the proposed amendments to the *Perth Market Act 1926*.

6 ACTS AMENDMENT AND REPEAL (COMPETITION POLICY) BILL 2002

6.1 The omnibus Bill repeals two and amends thirteen Acts in accordance with recommendations of NCP reviews of those Acts.³⁰ The amendments and repeals implement reforms by removing restrictions that reviews found were not in the public interest.

6.2 At its hearing on April 28 2003, Dr Morrison, Director Structural Policy, Department of Treasury and Finance, advised the Committee that each amendment in the Bill had been subject to a legislation review in accordance with clause 3 - *Competitive Neutrality Policy and Principles* and clause 5 - *Legislation Review* of the CPA.

²⁶ Government of Western Australia, *Public Interest Guidelines for Legislation Review*, November 2001, p 2.

²⁷ Ibid.

²⁸ Ibid.

²⁹ Transcript of evidence taken at Perth, April 28 2003, pp 16-17.

³⁰ See also paragraph 4.2 of this report.

Reviews involved consultation with key stakeholders including business, consumers and government.

- 6.3 Dr Morrison submitted that the least controversial repeals and amendments arising as a result of the NCP reviews had been included in the omnibus Bill, rather than in individual Acts. He submitted that the amendments to legislation made by the Bill are housekeeping matters and the changes they make are relatively small.³¹
- 6.4 Dr Morrison also advised the Committee that “...*nearly the entire Bill as it now stands was introduced by the previous Government in a similar form.*”³² He advised that although some amendments were removed and some included, it was “...*by and large the same Bill initiated by the previous Government and accepted, fostered and slightly expanded upon by the present Government.*”³³

Repeals

Bread Act 1982

- 6.5 The *Bread Act 1982* regulates the use of bakehouses, the times bread may be baked and delivered and prescribes the way bread delivery vehicles are identified.
- 6.6 At the Committee’s hearing on April 28 2003, Mr Newcombe, Director, Policy and Education, Department of Consumer and Employment Protection, advised the Committee that the review of this Act was conducted in 1998. Advertisements were twice placed in *The West Australian* newspaper and major stakeholders including the Baking Industry Employers Association of Western Australia, the Chamber of Commerce and Industry, the Miscellaneous Workers’ Union and the Transport Workers’ Union of Western Australia were written to directly.
- 6.7 Mr Newcombe advised that four written submissions were received, all of which supported the repeal.
- 6.8 The review found that the *Bread Act 1982* did not add anything to the State’s general health laws or occupational health and safety laws. Mr Newcombe submitted that the Department of Consumer and Employment Protection had received no complaints about the proposed repeal of the *Bread Act 1982* and “*Our general view is that no-one will notice it has gone.*”³⁴

³¹ Transcript of evidence taken at Perth, April 28 2003, p 4.

³² Ibid.

³³ Ibid.

³⁴ Ibid, p 6.

Wheat Marketing Act 1989

- 6.9 The *Wheat Marketing Act 1989* is redundant since it refers to the existence of the national Wheat Marketing Board, which is no longer in operation following changes to the Commonwealth's wheat marketing arrangements.
- 6.10 The Bill repeals the *Wheat Marketing Act 1989*.
- 6.11 At its hearing on April 28 2003, Ms Asforth, Manager, Legislation, Department of Agriculture, informed the Committee that there would be no impact as a result of the repeal of the *Wheat Marketing Act 1989*. She advised the Committee that the Wheat Marketing Board had ceased operation by 1998 and that the *Wheat Marketing Act 1989* has been redundant since then.

Amendments

Bush Fires Act 1954

- 6.12 This Act exempts land occupied by State government agencies from local authority fire management laws. This favours State-owned businesses over private sector competitors and was found in the NCP review to be against the principle of competitive neutrality.
- 6.13 Under the amendment to section 33 of the *Bush Fires Act 1954* proposed by clause 7 of the Bill, prescribed agencies as well as State-managed timber plantations on private land will be covered by local authority fire planning. This will allow the Minister flexibility to determine on practical grounds which entities should be subject to section 33 of the *Bush Fires Act 1954* and required to plough or clear firebreaks.
- 6.14 At the Committee's hearing on April 28 2003, Mr Bowden, Legal and Legislation Officer, Fire and Emergency Services Authority of Western Australia, advised the Committee that he did not expect the cost to government in complying with the amendment to be great. Mr Bowden submitted that owners or occupiers of properties should undertake normal perimeter firebreak measures in any event as part of good risk management.³⁵

Chicken Meat Industry Act 1977

- 6.15 Part 4 of the Bill removes the requirement under the *Chicken Meat Industry Act 1977* for approval of processing plants as health, safety and planning laws already cover this area.

³⁵ Ibid, p 7.

- 6.16 The Bill amends the *Chicken Meat Industry Act 1977* to allow for regulations to be made for environmental, animal welfare and health standards which will determine approval for growing premises. The proposed amendments also remove the obligation for chicken farmers to enter a prescribed form of fixed-price contract with processors.
- 6.17 At the Committee's hearing on April 28 2003, Ms Asforth advised that the NCP review had been conducted in close consultation with the chicken meat industry and that the industry supported the proposed amendments to the *Chicken Meat Industry Act 1977*.³⁶

Conservation and Land Management Act 1984

- 6.18 Section 140 of the *Conservation and Land Management Act 1984* applies a rating exemption to plantation forests grown with the approval of the Executive Director of the Department of Conservation and Land Management. This is against the principle of competitive neutrality.
- 6.19 The Bill repeals section 140 of the *Conservation and Land Management Act 1984*. This will ensure that State-owned businesses are subject to the same laws as private competitors.
- 6.20 At the Committee's hearing on April 28 2003, Mr Hancocks, Senior Policy Officer, Department of Conservation and Land Management, advised that to his knowledge section 140 of the *Conservation and Land Management Act 1984* has never been used and that the effect of removing it will be virtually nil.³⁷
- 6.21 Section 143 of the *Conservation and Land Management Act 1984* requires the Minister responsible for the Act to administer the Greenbushes State forest with the concurrence of the Minister responsible for the *Mining Act 1978*. This section was initially enacted to promote investment associated with the mining of tin in the area, however is outdated as there are other mechanisms which allow for consideration of mining interests.³⁸
- 6.22 The Bill repeals section 143 of the *Conservation and Land Management Act 1984*.
- 6.23 Mr Hancocks advised that the Forest Products Commission had been consulted on the proposed amendments to the *Conservation and Land Management Act 1984* and had no objection to them.³⁹

³⁶ Ibid, p 10.

³⁷ Ibid.

³⁸ Explanatory Memorandum to the Bill, p 5.

³⁹ Transcript of evidence taken at Perth, April 28 2003, p 11.

Eastern Goldfields Transport Board Act 1984

- 6.24 The Bill amends the *Eastern Goldfields Transport Board Act 1984* to remove the crown agency status of the Eastern Goldfields Transport Board and make it subject to local government rates. The objective is to make State-owned businesses subject to the same laws as private competitors.

Edith Cowan University Act 1984

- 6.25 Under the *Edith Cowan University Act 1984*, the trustee and investment powers of the Edith Cowan University Council are unduly limited in comparison to the State's other public universities.
- 6.26 Part 7 of the Bill amends the *Edith Cowan University Act 1984* by inserting new provisions, based on Murdoch University's powers, to correct this disparity.
- 6.27 At its hearing on April 28 2003 Mr Holland, Director, Management Services Centre, Edith Cowan University, advised the Committee that the *Murdoch University Act 1973* was chosen as the basis for the modelling of the new provisions rather than one of the enabling statutes for the State's other public universities because "...it is very simple in its wording and it gives us the ability we need to manage the business of the university...".⁴⁰ He also noted that Edith Cowan University is similar to Murdoch University, and it was felt that the *Murdoch University Act 1973* would "...be more than adequate to provide for Edith Cowan University Council to have those powers to invest."⁴¹

Gold Corporation Act 1987

- 6.28 Under the *Gold Corporation Act 1987*, the Gold Corporation and its subsidiaries enjoy several advantages over other businesses operating in precious metals markets. This is against the principle of competitive neutrality.
- 6.29 Part 8 of the Bill amends the *Gold Corporation Act 1987* by making the Gold Corporation and its subsidiaries liable to pay local government rate equivalents, guarantee charges and income tax equivalents to the State.
- 6.30 These amendments will make the Gold Corporation subject to tax equivalent obligations the same as other significant government businesses and will therefore bring it into line with the competitive neutrality obligations of NCP.
- 6.31 The Committee was advised by Dr Morrison at its hearing on April 28 2003 that as a result of Gold Corporation not making large profits in recent times, the revenue that

⁴⁰ Ibid, p 13.

⁴¹ Ibid.

Western Australia could expect to receive as a result of the proposed amendments was small. However Dr Morrison noted that if Gold Corporation were to become more profitable, the revenue to the State would increase.⁴²

Hire Purchase Act 1959

6.32 At the Committee's hearing on April 28 2003, Mr Newcombe, Director, Policy and Education, Department of Consumer and Employment Protection, advised the Committee that the *Hire Purchase Act 1959* is consumer legislation which regulates three aspects of hire-purchase transactions, namely:

- a) it specifies the information to be provided to persons before they enter a hire-purchase agreement and the form and content of the agreement;
- b) it implies into every hire-purchase agreement a set of standard conditions and warranties relating to title, fitness for purpose and quality of goods; and
- c) it governs the termination of agreements and repossession of goods that are subject to hire-purchase.⁴³

6.33 The *Hire Purchase Act 1959* also contains provisions which provide extra protections for farmers who purchase agricultural goods on hire-purchase. Mr Newcombe explained that these provisions relate to repossession, and enable farmers to take court action to defer repossession if they have not met their payments for up to 12 months, provided they can establish that they could not meet the repayments because of seasonal variation in farm income within that 12 month period.⁴⁴

6.34 As a result of the introduction of the Consumer Credit Code in 1996, the *Hire Purchase Act 1959* only applies to commercial hire-purchase transactions where the hirer is a corporation or the goods are to be used predominantly for business purposes.

6.35 The Committee was advised by Mr Newcombe that the review of the *Hire Purchase Act 1959* commenced in December 1996. More than 30 industry and consumer associations were invited to make submissions on the possible repeal of the *Hire Purchase Act 1959*. The review was also advertised in *The West Australian* newspaper.

6.36 Mr Newcombe advised the Committee that 13 submissions were received, the majority of which supported the repeal of the *Hire Purchase Act 1959*. Of the submissions which expressed concern about the proposed repeal, the major issue related to the loss of the special protections for farmers. Mr Newcombe advised that

⁴² Ibid, pp 30-31.

⁴³ Ibid, p 14.

⁴⁴ Ibid, pp 14-15.

these concerns were taken into account and that during the review process it was decided to retain the special protections for farmers under the *Hire Purchase Act 1959*.

6.37 Thus the amendments proposed by Part 9 of the Bill will have the effect that only selected provisions of the *Hire Purchase Act 1959* - relating to surplus from sale of goods, equitable relief and farm goods purchases - will continue to apply to new hire-purchase agreements entered into after the amendments come into operation. The Committee notes that farmers will retain the right to defer court action for 12 months if there is a repossession action.

6.38 Existing hire-purchase agreements will continue to be subject to the *Hire Purchase Act 1959*.

Licensed Surveyors Act 1909

6.39 Part 10 of the Bill amends the *Licensed Surveyors Act 1909* to broaden the make-up of the Land Surveyors Licensing Board to include consumer representation. The Bill also replaces the general requirement for licensed surveyors to be of good fame and character with more specific provisions determining eligibility to practice. The proposed new section prohibits the grant of a licence in various circumstances where an applicant has committed or been charged with an offence involving fraud or dishonesty.

Perth Market Act 1926

6.40 Section 11A of the *Perth Market Act 1926* gives the Perth Market Authority the power to set the trading times in the public market and the produce that may be traded during those times. This section also gives the Perth Market Authority the power to distinguish between persons, produce and purposes within its market complex with respect to the hours of operation as it thinks fit.

6.41 Clause 43 of the Bill repeals section 11A of the *Perth Market Act 1926* and removes these powers of the Perth Market Authority.

6.42 Section 11B of the *Perth Market Act 1926* provides that the Perth Market Authority may delegate its powers of making an exception to operating outside the hours it has set.

6.43 Clause 44 of the Bill repeals section 11B of the *Perth Market Act 1926*. This repeal is consequential to the proposed repeal of section 11A of the *Perth Market Act 1926*.

6.44 Clause 45 of the Bill amends section 13(1) of the *Perth Market Act 1926* by deleting paragraphs (3a), (3b), (3c) and (3d). Section 13(2a) is also repealed. These proposed amendments remove the power of the Perth Market Authority to make by-laws

- prohibiting the sale of produce at other markets and thereby removing the monopoly position of the Perth Market Authority in the control of the sale of agricultural produce at market.
- 6.45 Ms Ashforth advised that the proposed repeal of sections 11A and 11B of the *Perth Market Act 1926* was recommended “...because they can appear, on the face of them, to either impose restrictions or, more realistically, to have the potential to impose restrictions, depending on what the notice actually says.”⁴⁵
- 6.46 She submitted that “A lot of other public markets operate without those provisions and it was thought that the Perth market could do the same. It is better not to have restrictions on the face of the legislation.”⁴⁶
- 6.47 Dr Morrison stated that the powers provided by sections 11A and 11B do enable the Perth Market Authority to restrict competition.⁴⁷
- 6.48 Mr Halliday, Chief Executive Officer, Perth Market Authority, advised the Committee that the Perth Market Authority had some concerns about the proposed repeal of sections 11A and 11B of the *Perth Market Act 1926*. He advised that the Perth Market Authority has a very open market, with the only control the Authority has in terms of trading being the ability to restrict when a buyer can physically enter the site and sort through the produce to decide whether or not to make a purchase.
- 6.49 Mr Halliday submitted that section 11A of the *Perth Market Act 1926*, in giving the Perth Market Authority the power to control market hours, “...works in reverse to what a lot of people thought and ensures competition...”⁴⁸ by providing certainty in relation to the times the market is open. He expressed his opinion that the existing control over market hours provided to the Perth Market Authority by current sections 11A and 11B of the *Perth Market Act 1926* should be retained. Mr Halliday submitted that if the market was open 24 hours a day, seven days a week, purchasers could enter at any time to select the best produce or those products in short supply. Mr Halliday submitted that country buyers who have long distances to travel are at a disadvantage as they could not always be at the market earlier than other buyers to select the produce they wanted. He submitted that “Setting market hours would make it fairer to country buyers, city buyers and supermarkets.”⁴⁹
- 6.50 Mr Halliday expressed his opinion that the current restriction on market hours was beneficial because “By controlling market hours under the current section 11A of the

⁴⁵ Ibid, p 17.

⁴⁶ Ibid.

⁴⁷ Ibid, p 18.

⁴⁸ Ibid, p 17.

⁴⁹ Ibid.

*Act [Perth Market Act 1926], we give everyone the opportunity to know when the market is open. It is then up to them whether they want to go there at that time or not.*⁵⁰

- 6.51 At the Committee's hearing on April 28 2003 Ms Ashforth and Dr Morrison advised that amendments to the Bill may be moved in the Council with the effect of deleting the clauses of the Bill which propose to repeal sections 11A and 11B of the *Perth Market Act 1926*.
- 6.52 In response to a question from Hon Simon O'Brien in relation to the consequences, in terms of NCP, of the Western Australian Parliament not repealing sections 11A and 11B of the *Perth Market Act 1926*, Dr Morrison expressed his opinion that the NCC would consider these particular amendments relating to hours to be a relatively minor reform, particularly if there was a public interest reason to justify retaining those sections. He submitted that it could only become an issue with the NCC if there was discrimination beyond that which would be justifiable in the public interest.⁵¹ His view was that the NCC would appreciate that more substantive reforms were being carried out to the *Perth Market Act 1926*.⁵²
- 6.53 The Committee is aware that negotiations are currently occurring between the Minister for Agriculture, Forestry and Fisheries and the Treasurer in relation to the proposed repeal of sections 11A and 11B of the *Perth Market Act 1926* by clauses 43 and 44 of the Bill. The Committee queries whether these proposed repeals, and their intended effect, are a direct consequence of NCP. The Committee has not made a recommendation in relation to this issue but has included these comments in the report to draw them to the Council's attention and to assist debate in the Council.

Sandalwood Act 1929

- 6.54 Part 12 of the Bill repeals section 3(2) of the *Sandalwood Act 1929*. Section 3(2) prevents more than ten per cent of the total approved sandalwood harvest in any year coming from private non-plantation land.
- 6.55 This will have the effect of allowing licences to be granted according to applicable State environmental laws and policy rather than on whether the sandalwood is located on crown or private land.

⁵⁰ Ibid, p 17.

⁵¹ Ibid, p 19.

⁵² Ibid, p 18.

State Supply Commission Act 1991

- 6.56 The *State Supply Commission Act 1991* will be amended by Part 13 of the Bill to remove the State Supply Commission's exemption from stamp duty on the transfer of property or any other relevant liability. This amendment is in accord with the principle of competitive neutrality.
- 6.57 At the Committee's hearing on April 28 2003, Mr Stokes, Chief Executive Officer, State Supply Commission, advised the Committee that it was indicated as part of the review of the *State Supply Commission Act 1991* that little cost or benefit would flow to Western Australia as a result of this amendment.⁵³

Valuation of Land Act 1978

- 6.58 Section 6(3) of the *Valuation of Land Act 1978* currently requires that a person appointed Valuer General must be qualified for membership of the Australian Institute of Valuers (Incorporated) as a Fellow or Associate of that Institute.
- 6.59 The Committee notes that the Australian Institute of Valuers (Incorporated) is now known as the Australian Property Institute. At the Committee's hearing on April 28 2003 Mr Fenner, Valuer General, stated that to qualify for appointment to the position of Valuer General "You must be a licensed valuer or be eligible for membership of the Australian Property Institute."⁵⁴ Eligibility for membership of the Australian Property Institute involves the applicant meeting a number of alternate academic and professional experience criteria that may not require the applicant to hold a valuation qualification.
- 6.60 A review of the *Valuation of Land Act 1978* was conducted by the Valuer General's Office in 1998 in accordance with NCP. The review recommended that "Section 6(3) of the Act should be amended to require that a person appointed Valuer General shall be a person who is able to demonstrate a high level of qualifications and experience in the valuation of land."⁵⁵ A copy of the cover page and selected relevant pages of the *National Competition Policy Review of the Valuation of Land Act 1978 and Valuation of Land Regulations 1979* dated June 26 1998 are attached as Appendix 3 to this report.
- 6.61 The NCP recommendation in relation to section 6(3) of the *Valuation of Land Act 1978* is implemented by clause 51 of the Bill. This clause proposes new section 6(3) which provides that the person appointed Valuer General shall be a person who has, in the opinion of the Minister, the qualifications and experience appropriate to the

⁵³ Ibid, p 21.

⁵⁴ Ibid, p 23.

⁵⁵ *National Competition Policy Review of the Valuation of Land Act 1978 and Valuation of Land Regulations 1979*, June 26 1998, p viii.

exercise of the powers, and the performance of the duties and functions, conferred or imposed upon the Valuer General by or under the *Valuation of Land Act 1978*. This amendment broadens the qualifications of the Valuer General to become more competency based. The proposed new section 6(3) of the *Valuation of Land Act 1978* reflects the recommendation of the NCP review dated June 26 1998.

- 6.62 In a letter to the Committee dated May 5 2003 Dr Morrison submitted that the proposed amendment “...allows for candidates with the expertise required (such as management skills) to fulfil the role while still requiring that the person ‘demonstrate a high level of qualifications and experience in the valuation of land.’”⁵⁶
- 6.63 In response to a query from the Chairman as to why the definition of qualification was an issue of national competition policy, Dr Morrison submitted that “*It is probably a borderline issue, but there is some feeling that it need not be prescriptive in such a position: it might preclude somebody who in all respects bar one is extremely well suited for the position.*”⁵⁷ Dr Morrison submitted that it relates to the public interest aspect of national competition policy; that is, it would not be in the public interest to limit consideration of a person’s suitability for the position simply because they did not have a specific qualification.
- 6.64 Clause 52 of the Bill clarifies the Minister’s power to authorise the Valuer General to release information to the public by amending section 14(2) of the *Valuation of Land Act 1978* to include the words “*or to the public at large*”.
- 6.65 Clause 53 of the Bill inserts a new section 16A into the *Valuation of Land Act 1978* giving the Minister an entitlement to have and retain copies of information in the possession of the Valuer General. The Minister would also have access to the Valuer General’s staff to obtain this information.
- 6.66 The Explanatory Memorandum to the Bill states that “*This power is expected to improve the Minister’s ability to make decisions about release of information under section 14.*”⁵⁸
- 6.67 At the Committee’s hearing on April 28 2003 Mr Fenner expressed concern with respect to confidentiality issues arising from the proposed amendment to section 14(2) and proposed new section 16A of the *Valuation of Land Act 1978* and expressed the view that section 16A should follow section 14 rather than section 16.

⁵⁶ Letter from Dr Morrison to the Committee dated May 5 2003.

⁵⁷ Transcript of evidence taken at Perth, April 28 2003, p 23.

⁵⁸ Explanatory Memorandum to the Acts Amendment and Repeal (Competition Policy) Bill 2002, p13.

- 6.68 The Committee considered the issues raised by Mr Fenner in detail and considered that, on balance, the Minister required the powers under section 16A and that the designation of the new section was appropriately section 16A.
- 6.69 Clause 54 of the Bill corrects a disparity between the qualification rules for valuers engaged by local authorities and those employed by the Valuer General. Clause 54 of the Bill repeals section 25(2) of the *Valuation of Land Act 1978*. Section 25(2) of the *Valuation of Land Act 1978* provides that a rating or tax authority can only engage those valuers licensed under the *Valuation of Land Act 1978* or qualified for membership of the Australian Institute of Valuers (Incorporated) as a Fellow or Associate of that Institute to make general or interim land valuations.
- 6.70 At the Committee's hearing on April 28 2003 Dr Morrison advised the Committee that this amendment was suggested with reference to the public interest. He submitted that "*As I understood it, the intention of these reforms was not to take away people's qualification requirements but to ensure that there was not a disparity between the rules that were applied to local authorities and staff employed by the Valuer General.*"⁵⁹

Western Australian Meat Industry Authority Act 1976

- 6.71 The Bill amends the *Western Australian Meat Industry Authority Act 1976* to confirm the primary status of the Authority as a regulator by preventing it from operating saleyards and abattoirs, other than the Midland saleyard, unless the Minister is satisfied that there are exceptional circumstances.
- 6.72 Part 15 of the Bill also removes the power of the Authority to reject an application to establish an abattoir on the grounds that the area is already serviced by another such facility, or limit the expansion of abattoir facilities on the grounds that it will impact on others in the area.

7 HAIRDRESSERS REGISTRATION ACT 1946

- 7.1 At its hearing on April 28 2003 the Committee discussed the *Hairdressers Registration Act 1946*, and the proposal by Hon Peter Foss MLC to repeal it, with the representatives from the Department of Treasury and Finance.⁶⁰
- 7.2 The Committee notes that two previous Western Australian Parliamentary Committees have considered and reported on Hairdressers Registration Repeal Bills, namely the previous Standing Committee on Government Agencies (Report Number 37 tabled in November 1995) and the previous Standing Committee on Public Administration (Report Number 5 tabled in December 1997).

⁵⁹ Transcript of evidence taken at Perth, April 28 2003, p 27.

⁶⁰ Refer to Supplementary Notice Paper Number 162, Issue Number 1.

- 7.3 The *Hairdressers Registration Act 1946* establishes the Hairdressers Registration Board of Western Australia for the purpose of, among other things, registering hairdressers.
- 7.4 The *Hairdressers Registration Act 1946* requires that for a hairdresser to be registered, that person must have satisfied the Hairdressers Registration Board that they are of good character and completed an appropriate course of training and passed appropriate examinations.
- 7.5 The *Hairdressers Registration Act 1946* only applies to hairdressers operating within 25 miles (40 kilometres) from the General Post Office in Perth.
- 7.6 The Committee was advised by Dr Morrison by way of letter dated May 5 2003 that *“A further NCP review was subsequently undertaken and the Government endorsed this in February 2003. The review recommends that provisions requiring hairdressers to hold certain qualifications be retained and extended to incorporate areas outside of the metropolitan area.”*⁶¹
- 7.7 Dr Morrison also advised that *“At this stage, no legislative amendments have been drafted to bring into effect the review’s recommendations.”*⁶²
- 7.8 The Committee has included these comments on the *Hairdressers Registration Act 1946* in the report to draw them to the Council’s attention and to assist debate in the Council.

8 OTHER COMMENTS

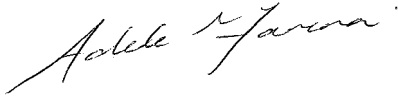
- 8.1 In his letter to the Committee dated March 28 2003 the Treasurer advised that the final date for implementation of the NCP was originally set for December 31 2000. However it was subsequently agreed that the timetable should be extended to June 30 2003 because jurisdictions were not able to meet the original deadline.
- 8.2 At the Committee’s hearing on April 28 2003 the Chairman queried whether a consequence of the Bill not being passed by June 30 2003 would be a reduction in payments to the State. Dr Morrison advised the Committee that the NCC would not be drawn on exactly what the consequences would be, but he submitted that if the Western Australian Parliament had not passed a reasonable number of amendments, the State would be in a worse situation than if it had done so. Dr Morrison advised that the Department of Treasury and Finance are currently preparing a report to the NCC submitting why Western Australia should receive payments. He submitted that

⁶¹ Letter from Dr Morrison to the Committee dated May 5 2003.

⁶² Ibid.

the report would be strengthened by the passage of the Bill.⁶³ Refer also to paragraphs 5.22 and 5.23 of this report.

Recommendation 1: The Committee recommends that the Acts Amendment and Repeal (Competition Policy) Bill 2002 be passed without amendment.



Hon Adele Farina MLC
Chairman

Date: June 10 2003

⁶³ Transcript of evidence taken at Perth, April 28 2003, p 5.

APPENDIX 1
IDENTIFIED STRUCTURES FOR UNIFORM LEGISLATION

APPENDIX 1

IDENTIFIED STRUCTURES FOR UNIFORM LEGISLATION

The former Legislative Assembly Standing Committee on Uniform Legislation and Intergovernmental Agreements identified and classified nine legislative structures relevant to the issue of uniformity in legislation which were endorsed by the 1996 Position Paper. A brief description of each is provided below.

- Structure 1:** *Complementary Commonwealth-State or Co-operative Legislation.* The Commonwealth passes legislation, and each State or Territory passes legislation which interlocks with it and which is restricted in its operation to matters not falling within the Commonwealth's constitutional powers.
- Structure 2:** *Complementary or Mirror Legislation.* For matters which involve dual, overlapping, or uncertain division of constitutional powers, essentially identical legislation is passed in each jurisdiction.
- Structure 3:** *Template, Co-operative, Applied or Adopted Complementary Legislation.* Here a jurisdiction enacts the main piece of legislation, with the other jurisdictions passing Acts which do not replicate, but merely adopt that Act and subsequent amendments as their own.
- Structure 4:** *Referral of Power.* The Commonwealth enacts national legislation following a referral of relevant State power to it under section 51 (xxxvii) of the Australian Constitution.
- Structure 5:** *Alternative Consistent Legislation.* Host legislation in one jurisdiction is utilised by other jurisdictions which pass legislation stating that certain matters will be lawful in their own jurisdictions if they would be lawful in the host jurisdiction. The non-host jurisdictions cleanse their own statute books of provisions inconsistent with the pertinent host legislation.
- Structure 6:** *Mutual Recognition.* Recognises the rules and regulation of other jurisdictions. Mutual recognition of regulations enables goods or services to be traded across jurisdictions. For example, if goods or services to be traded comply with the legislation in their jurisdiction of origin they need not comply with inconsistent requirements otherwise operable in a second jurisdiction, into which they are imported or sold.

Structure 7: *Unilateralism.* Each jurisdiction goes its own way. In effect, this is the antithesis of uniformity.

Structure 8: *Non-Binding National Standards Model.* Each jurisdiction passes its own legislation but a national authority is appointed to make decisions under that legislation. Such decisions are, however, variable by the respective State or Territory Ministers.

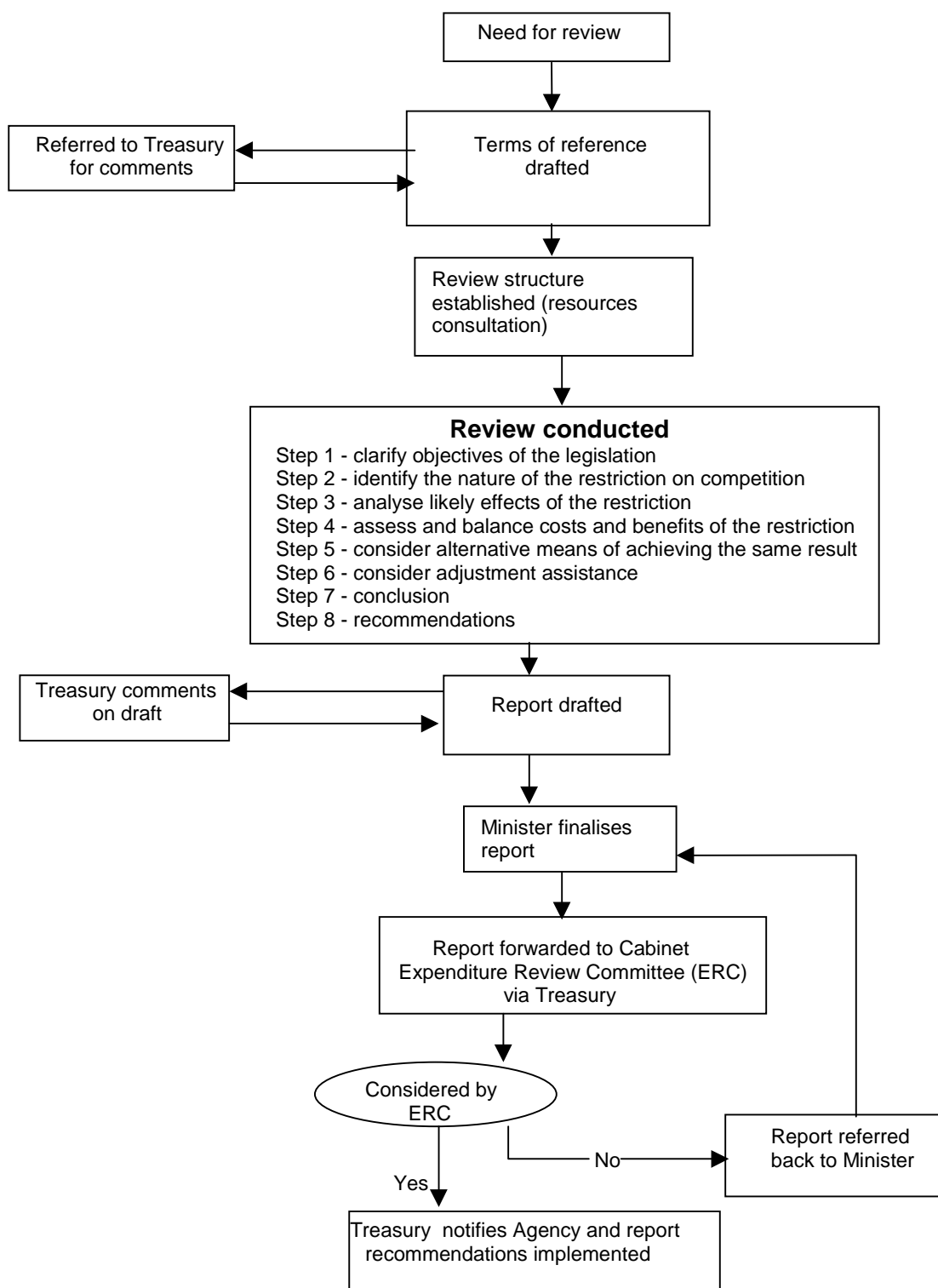
Structure 9: *Adoptive Recognition.* A jurisdiction may choose to recognise the decision making process of another jurisdiction as meeting the requirements of its own legislation regardless of whether this recognition is mutual.

APPENDIX 2

LEGISLATION REVIEW PROCESS

APPENDIX 2

LEGISLATION REVIEW PROCESS



APPENDIX 3

SELECTED RELEVANT PAGES OF THE *NATIONAL*
COMPETITION POLICY REVIEW OF THE VALUATION OF
LAND ACT 1978 AND VALUATION OF LAND
REGULATIONS 1979

APPENDIX 3

NATIONAL COMPETITION POLICY REVIEW OF THE VALUATION OF LAND ACT 1978 AND VALUATION OF LAND REGULATIONS 1979

26 JUNE 1998

**Valuer General's Office
2nd Floor, 18 Mount Street
PERTH WA 6000.**

It should be noted that during the course of this review the Australian Institute of Valuers and Land Economists changed its name to the Australian Property Institute.

OBJECTIVES OF THE ACT

The second reading speech for the Valuation of Land Bill 1978² indicates that the principal objectives of the Act are as follows.

- To divorce the functions of determining land and property values, dealing with objections to these values, and defending appeals against values, from the Commissioner of Taxation's functions of tax collection.
- To provide for the central coordination of valuation activities for rating and taxing purposes.
- To define various types of valuation and thereby ensure consistency in making of valuations.
- To provide for production of a central data bases of land valuations (valuation rolls) for use by rating and taxing authorities and the public.
- To ensure public notification of valuations and to allow for objections to valuations.
- To establish an appeal tribunal to deal with valuation matters.

FINDINGS AND CONCLUSIONS

The review of the Valuation of Land Act 1978 and the Valuation of Land Regulations 1979 identified eight provisions of this legislation that constituted potential restrictions on competition. Conclusions are presented below on the costs and benefits to the public associated with provisions of the legislation that were deemed to constitute potential restrictions on competition. Conclusions are also made on whether to retain, amend or repeal the relevant parts of the legislation.

Restriction 1. A person appointed Valuer-General shall be a person who is qualified for membership of the Australian Institute of Valuers (Incorporated) as a Fellow or Associate of that Institute (Section 6(3)).

The restriction on eligibility for the position of Valuer General was assessed as providing public benefits through ensuring that the position has been held by a person with qualifications and experience as a valuer. The benefits arising from this were identified as providing for the Valuer General to (i) develop standards and promote consistency in practices of valuation by public-sector and private valuers; (ii) set and maintain standards for valuation in the Valuer General's Office; and (iii) promoting public confidence in the

² Legislative Assembly, 24 August 1978.

activities of the Valuer General's Office and hence in some elements of the state taxation system. Public costs may occur through limiting eligibility for the position of persons with capabilities in public administration, and allowing a private organisation to set selection criteria for a senior public-service position. Although the restriction on eligibility is likely to be significant, the associated cost was considered small due to the efforts made to secure applicants for the position by national advertising and filling the position on a contract basis. Also, there is no evidence to suggest that the restriction on eligibility allows the incumbent of the position to command greater remuneration and thereby impose costs on the state. Allowing a private organisation to set selection criteria for the position of Valuer General was assessed as not having imposed any historical cost, but would have uncertain future effects as changes occur to the private organisation. It was therefore assessed that the current and historical costs of the restriction are small, and that the restriction provides a net public benefit through ensuring that the position of Valuer General is held by a person with qualifications and experience as a valuer.

An alternative to the provisions of Section 6(3) of the Act would be for the legislation to explicitly require that the person holding the position of Valuer General have demonstrable skills, qualifications and experience as a valuer. This would provide the public benefits of the existing restriction without the uncertainty and potential future costs of having the criteria for the position established by a private organisation which has changed considerably since enactment of the Valuation of Land Act.

It was therefore concluded that Section 6(3) of the Act should be amended to require that a person appointed Valuer-General shall be a person who is able to demonstrate a high level of qualifications and experience in the valuation of land..

Restriction 2. Any person who is employed by, or who is a member of, any rating or taxing authority cannot be engaged under contract as a valuer by the Valuer General (Section 16(2)).

The restriction on contract engagement of valuers employed by rating and taxing authorities is primarily directed at avoiding conflicts of interest for valuers engaged by the Valuer General's Office. This corresponds with the explicit legislative objective of divorcing valuation activities from rating and taxing functions of government. Although there is no evidence to suggest that conflicts of interest would occur in the absence of the restriction, maintenance of public confidence is still regarded as an important public benefit. As there was not considered to be any significant public cost, the restriction was assessed as providing a net public benefit.

As there was no significant costs arising from the restriction, alternatives means of regulation were not considered. It was therefore concluded that the restriction is in the public interest and that Section 16(2) of the Act should be retained.

Restriction 3. Any person engaged as a valuer by a rating or taxing authority for the purpose of making valuations for rating and taxing purposes must be licensed under

The statutory immunity provided by Section 42 provides limited protection for the Valuer General against claims of negligence arising in the performance of statutory activities. The provision does not provide protection against liabilities potentially incurred in carrying out non-statutory activities, including the services provided by the Valuer General that are also provided by the private sector. In view of this, the Valuer General purchases relevant insurances at normal commercial rates. Consequently, the statutory immunity is not considered to result in any cost savings to the Valuer General's Office that would result in a competitive advantage over private valuers. Because of the limited protection in relation to statutory activities, and the absence of effects on competition with private valuers, the statutory immunity provided by Section 42 was assessed as providing a public benefit. It was concluded that Section 42 of the Act should be retained.

Restriction 8. Fees may be levied on members of the public, including private valuers, for copies of, or extracts from, valuation rolls (Section 29(1); Regulation 6).

This restriction was assessed as providing a small public benefit through cost recovery without imposing significant costs on the public or on private valuers that may wish to obtain information from the valuation roll. It was therefore concluded that Section 29(1) of the Act and Regulation 6 should be retained.

PROPOSED LEGISLATIVE REFORM

Three legislative changes are proposed as a result of this review.

- i. Section 25(2) of the Act should be repealed. This section requires that any person engaged as a valuer by a rating or taxing authority for the purpose of making valuations for rating and taxing purposes must be licensed under the Land Valuers Licensing Act 1978 or qualified for membership of the Australian Institute of Valuers as a fellow or associate.
- ii. Section 6(3) of the Act should be amended to require that a person appointed Valuer-General shall be a person who is able to demonstrate a high level of qualifications and experience in the valuation of land. This section currently requires that a person appointed Valuer-General shall be a person who is qualified for membership of the Australian Institute of Valuers (Incorporated) as a Fellow or Associate of that Institute
- iii. A clause should be added to Section 14 of the Act to the effect that the Valuer General shall on a regular basis furnish the Minister with details of the types of information collected under the Act and the Minister shall provide authorisation for the information to be made available to the public where the Minister deems it in the public interest to do so.

It is proposed to draft these legislative changes and include these in a Bill associated with operational changes to the Act to be put before Parliament in the 1998/99 financial year.

4. EFFECTS ON COMPETITION AND THE ECONOMY

4.1 PREAMBLE

The review of the Valuation of Land Act 1978 and the Valuation of Land Regulations identified eight potential restrictions on competition. In this chapter the potential economic and social advantages and disadvantages of each restriction are identified, and the restriction classified as requiring major or minor review in terms of the guidelines for legislative review issued by the Competition Policy Unit of Treasury. Quantitative or qualitative assessments of the advantages and disadvantages of each restriction are described and a conclusion made on the public benefit of the restriction and the relevant parts of the legislation.

Parts of the legislation for which no potential restrictions on competition were identified are not addressed further in this report.

4.2 ELIGIBILITY FOR THE POSITION OF VALUER GENERAL

Restriction 1

A person appointed Valuer-General shall be a person who is qualified for membership of the Australian Institute of Valuers (Incorporated) as a Fellow or Associate of that Institute (Section 6(3)).

Potential Disadvantages of the Restriction

- Restricted eligibility and competition for the position of Valuer General.
- Additional costs to the Western Australian government through the restriction on eligibility for the position of Valuer General and consequent powers of the incumbents of the position to command higher remuneration.
- Lack of government control over the selection of a person to fill the position of Valuer General as a result of the required qualifications for the position being determined by a non-government organisation.

Potential Advantages of the Restriction

- Consistency in practices of valuation by public-sector and private valuers through a *de facto* leadership role of the Valuer General in the valuation profession.
- Confidence of the public and employees in the position of Valuer General and activities of the Valuer General's Office.
- Maintenance of high standards of valuation activities by the Valuer General's Office as a result of the person holding ultimate responsibility for valuation activities being well informed in relation to practices of valuation.

Classification

This restriction was assessed as requiring minor review in terms of the Treasury guidelines. The impact of the restriction can be assessed by reference to the activities of the Valuer General and hence to the necessary knowledge and expertise for the position. Consequently, a detailed cost-benefit analysis was not considered necessary to determine whether the restriction is in the public interest.

Assessment of Costs and Benefits

Potential Disadvantages and Costs

Effect 1.1 Restricted eligibility and competition for the position of Valuer General.

How: The Act imposes a requirement that the Valuer General, and thereby the chief executive of the Valuer General's Office, is qualified for membership of the Australian Institute of Valuers (Incorporated) as a Fellow or Associate of that Institute. As well as overseeing of valuation activities, the Valuer General also functions as the chief executive officer of the Valuer General's office. The requirement for qualification as a valuer restricts eligibility for the position of persons with capabilities in other functions of the chief executive of a government agency.

Estimate of Impact: A significant restriction on eligibility for the position of Valuer General, although competition for the position still exists.

Supporting Evidence: The position of Valuer General is restricted to being occupied by a person with qualifications and experience as a valuer and thus would thus prevent persons without such qualifications and experience being considered for the position, despite being suited for the position in terms of capability in administrative management of a public authority.

It is not possible to quantify the extent to which the restriction reduces competition for the position of Valuer General, but the reduction may be significant. Competition for the position is encouraged by filling the position on a contract basis (terms of up to five years) and national advertisement of vacancies in the position. In addition to qualifications as a valuer, an appointee to the position of Valuer General must have demonstrated capabilities necessary for appointment to the state government's senior executive service.

Effects When?: Ongoing.

Affects Who?: Western Australian government and public, and aspirants for the position of Valuer General.

Public objectives affected: Economic/financial and other performance objectives for the Valuer General's Office.

Effect 1.2 Additional costs to the Western Australian government.

How: Restriction on eligibility for the position of Valuer General and consequent powers of the incumbents of the position to command higher remuneration

Estimate of Impact: No impact.

Supporting Evidence: The position of Valuer General has remuneration on the same scale as other positions of similar level in state government's senior executive service. There is no evidence to suggest that greater remuneration is achieved as a result of restricted competition for the position.

Effects When?: Not applicable.

Affects Who?: Not applicable.

Public objectives affected: Not applicable.

Effect 1.3 Lack of government control over the selection of a person to fill the position of Valuer General.

How: The required qualifications for the position are determined by a non-government organisation.

Estimate of Impact: Historically negligible, but future costs are uncertain.

Supporting Evidence: The section of the legislation giving rise to the restriction allows a private professional organisation to establish the standards of qualifications and experience pertaining to the position of Valuer General. At the time the legislation was developed, the relevant private organisation was the Australian Institute of Valuers and the standards of qualifications and experience were compatible with an objective of having the position of Valuer General held by a person with an established professional standing as a valuer.

On face value, the impact of the restriction may appear to be limited by a change in 1990 of the "Australian Institute of Valuers" to the "Australian Institute of Valuers and Land Economists" and again in 1998 to the "Australian Property Institute". Technically a person could meet the requirements of the legislation without being qualified as a valuer, that is by

qualification for membership of the institute as a land economist or other profession eligible for membership.

It is likely that, if challenged, the legislation would be interpreted in the context of the original intent of ensuring that the Valuer General is qualified as a valuer. Nevertheless, with the broadening of the membership base of the professional body (now the Australian Property Institute), the standards have become ambiguous. Furthermore, the standards for membership of the professional organisation are subject to change over time in a manner that may not meet the government's objectives in the legislation. Consequently, the future effects of the restriction are uncertain.

Effects When?: Future.

Affects Who?: Western Australian government and public, and aspirants for the position of Valuer General.

Public objectives affected: Economic/financial and other performance objectives for the Valuer General's Office.

Potential Advantages and Benefits

Effect 1.4 Consistency in practices of valuation by public-sector and private valuers.

How: Pronouncements by the Valuer General on matters of policy and valuation practice serve to establish codes of practice and standards for the valuation profession. The position of the Valuer General as chief executive of a government agency contributes to the necessary perception of authority for such a leadership influence.

Estimate of impact: The defacto leadership role of the Valuer General is considered to have a substantial effect on maintaining consistent standards and practices in valuation activities across the profession, and across both public and private valuation activities.

Supporting Evidence: Instructions to valuers in the Valuer General's Office are often adopted as standards practices for the profession within the state. An important example is the policy manual for the valuation of government assets which initiated the concept of "deprival value" which relates to the valuation of assets held for continued use, but which differ according to whether or not they would be replaced if the owner was deprived of the asset. This policy and associated *pro forma* instructions to valuers have been adopted as a guideline for practice amongst

private valuers.

Effects When?: Ongoing.

Affects Who?: Valuers in Western Australia and the Western Australian government and public utilising, or affected by, valuation services.

Public objectives affected: Economic/financial objectives relating to consistent methods of property valuation throughout the state.

Effect 1.5 Public and employee confidence in the position of Valuer General and activities of the Valuer General's Office.

How: The person seen by rating and taxing authorities and by property owners as being ultimately responsible for valuation activities is perceived of as being qualified and experienced in property valuation.

Estimate of impact: Considered by officers of the Valuer General's Office to be significant.

Supporting Evidence: Activities of the Valuer General's Office have a large impact on other public authorities, the general public and business firms through determining taxation liabilities. Perceptions of the Valuer General as being qualified and experienced as a valuer are likely to promote confidence in the impartiality and consistency of taxes based on land values.

Effects When?: Ongoing.

Affects Who?: Western Australian public.

Public objectives affected: Reduction of public uncertainty and perceived risk associated with government activity.

Effect 1.6 Maintenance of high standards of valuation activities by the Valuer General's Office.

How: The person holding ultimate responsibility for valuation activities is well informed in relation to practices of valuation and acts to improve and maintain standards of practice in valuation.

Estimate of impact: The Valuer General has a substantial role in overseeing valuation activities and in developing and implementing policies and procedures for valuation.

Supporting Evidence: Only about one third of the Valuer General's workload relates exclusively to administrative activities for the Valuer General's Office. The remainder relates to overseeing valuation activities and participating in policy development,

both of which require expertise as a valuer. These activities include the approval of all valuation policies and practices, and provision of advice to government and parliament on valuation issues.

Effects When?: Ongoing.

Affects Who?: Western Australian government and public.

Public objectives affected: Economic/financial objectives relating to the valuation functions of the Valuer General's Office.

Assessment of Public Benefit

The restriction on eligibility for the position of Valuer General was assessed as providing public benefits through ensuring that the position has been held by a person with qualifications and experience as a valuer. The benefits arising from this were identified as providing for the Valuer General to (i) develop standards and promote consistency in practices of valuation by public-sector and private valuers; (ii) set and maintain standards for valuation in the Valuer General's Office; and (iii) promoting public confidence in the activities of the Valuer General's Office and hence in some elements of the state taxation system. Public costs may occur through limiting eligibility for the position of persons with capabilities in public administration, and allowing a private organisation to set selection criteria for a senior public-service position. Although the restriction on eligibility is likely to be significant, the associated cost was considered small due to the efforts made to secure applicants for the position by national advertising and filling the position on a contract basis. Also, there is no evidence to suggest that the restriction on eligibility allows the incumbent of the position to command greater remuneration and thereby impose costs on the state. Allowing a private organisation to set selection criteria for the position of Valuer General was assessed as not having imposed any historical cost, but would have uncertain future effects as changes occur to the private organisation. It was therefore assessed that the current and historical costs of the restriction are small, and that the restriction provides a net public benefit through ensuring that the position of Valuer General is held by a person with qualifications and experience as a valuer.

4.3 ELIGIBILITY FOR ENGAGEMENT AS A VALUER

4.3.1 Eligibility for Engagement as a Valuer by the Valuer General

Restriction 2

Any person who is employed by, or who is a member of, any rating or taxing authority cannot be engaged under contract as a valuer by the Valuer General (Section 16(2)).

Potential Disadvantages of the Restriction

- Reduced ability of the Valuer General to undertake valuation activities as a result of restricted eligibility and competition for the engagement as a valuer by the Valuer