ACTS AMENDMENT AND REPEAL (COMPETITION POLICY) BILL 2000

EXPLANATORY MEMORANDUM

PART 1 - PRELIMINARY

This part contains the title of the Act and the commencement provisions.

Clause 1 Short title

Citation of the Act.

Clause 2 Commencement

Different days may be fixed by proclamation for the commencement of different provisions, to allow for preparation of regulations as needed.

PART 2 – REPEALS

This part repeals two Acts in accordance with recommendations of National Competition Policy reviews of the Acts, undertaken to comply with the State's obligations under the 1995 Competition Policy Agreements.

Clause 3 *Bread Act 1982* repealed, and consequential amendment

The *Bread Act 1982* is repealed and a consequential amendment is made to the *Consumer Affairs Act 1971*.

Clause 4 *Racing Restriction Act 1927* repealed, and consequential amendment

The *Racing Restriction Act 1927* is repealed and a consequential amendment is made to the *Western Australian Greyhound Racing Authority Act 1981*.

PART 3 - AMENDMENTS

This part amends a number of laws in accordance with recommendations of National Competition Policy reviews of those laws, undertaken to comply with the State's obligations under the 1995 Competition Policy Agreements. The reviews identified restrictions on competition and considered whether the restrictions are in the public interest. The amendments in this Part implement reforms in respect of restrictions found not to be in the public interest in their present form. Some minor miscellaneous amendments have also been made.

Clause 5 *Bush Fires Act 1954* amended

Clause 5(2) clarifies that in the Act generally an "owner or occupier of land" does not include a State agency, instrumentality or department, subject to two exceptions in respect of section 33.

Clause 5(3) sets out two circumstances whereby a State agency or instrumentality is an "owner or occupier of land" for the purposes of section 33, which deals with powers of local governments to require owners and occupiers of land to take measures to prevent outbreak of bushfires. The exceptions are:

- an instrumentality or agency that is prescribed for this purpose. This will allow the Minister flexibility to determine on practical grounds which entities should be subject to section 33. For example, it may be appropriate for government trading entities to be subject to section 33 in the same way as the private sector businesses with which they compete.

- the Executive Director of the Department of Conservation and Land Management, in relation to land managed by the Department under a timber sharefarm agreement entered into under section 16(1) of the *Conservation and Land Management Act 1984*.

Clause 6 *Chicken Meat Industry Act 1977* amended

The clause makes several major amendments to the Act and a number of consequential amendments. The main amendments are as follows.

Clause 6(4)(e) inserts a new section 15(2) that sets out matters that the Chicken Meat Industry Committee may take into account in laying down criteria for determining whether a grower is an efficient grower under section 15(c). The matters are the productivity of growers, the average price for chickens determined under section 16 and the market for chicken meat.

Currently these matters are relevant under section 19A(13), which the Bill repeals, to approval of growing premises under section 19A. Under the Bill these matters will no longer affect the approval of growing premises, as it is not appropriate for the Committee to intervene in decisions about growing premises on the basis of these market considerations. However, the matters remain relevant to the Committee's function of laying down criteria for determining whether a grower is an "efficient grower" for the purposes of determining growers' entitlements under an agreement with a processor.

The term "standard price" is replaced by the term "average price" throughout the Act, as the latter term better conveys the potential for prices paid under the prescribed form of agreement to vary. The use of the term "average" is not

intended to place any constraints on the Committee's exercise of its powers under section 16.

Clause 6(6) removes the reference to cost of production figures being supplied by the Department, for the purposes of the Committee's determination under section 16 of the average price for broiler chickens. In practice a number of sources can supply cost of production figures, and it is not necessary to limit the source. Section 16(4) continues to provide for a prescribed method of determining the price, allowing the Government if necessary to regulate what production figures should be used, or any other relevant matters.

Clause 6(10) repeals section 17, which currently prohibits sale and purchase of broiler chickens except in accordance with a written agreement that is in or to the effect of the prescribed form of agreement. The repeal means it will no longer be mandatory for growers and processors to use the prescribed form. However the prescribed form remains relevant in the ways noted below.

C**lause 6(9)** inserts a new section 16(7) that limits the application of section 16 (which deals with the average price to be paid for chickens under the prescribed form) to those agreements that are in the prescribed form.

Clause 6(12) inserts new sections 18(1a) and (1b) that limit the dispute resolution function of the Committee under section 18 to disputes arising under:

- agreements that are in or to the effect of the prescribed form of agreement; and
- other written agreements that provide for a dispute to be placed before the Committee.

Clause 6(13) repeals section 19, which currently sets out a requirement for Ministerial approval to establish a processing plant. The purpose of section 19 in the current Act is not clear – for example, there is no indication what matters the Minister should consider in making his decision. Given that other better targeted laws (eg health and planning laws) apply to processing plants, section 19 is an unnecessary additional hurdle and is appropriately repealed.

Clause 6(14) inserts a new section 19A(5a) that affects the criteria the Committee must apply in deciding whether to approve an application for approval of growing premises. New sections 24(2)(aa) and (fa), inserted by **clause 6(18)**, allow for regulations to be made:

- providing for environmental, animal welfare and health matters relating to the growing of chickens; and

- prescribing requirements with which growing premises have to comply.

It is intended that the requirements with which growing premises have to comply will be essentially the standards provided for environmental, animal welfare and health matters, although other relevant matters may be prescribed. Once suitable regulations are made, they will provide the criteria by which the Committee makes its decision. The same standards will apply to a Committee decision under new section 19A(9a), inserted by **clause 6(15)**, of whether an existing approval should be revoked.

These provisions replace the broad discretion currently applied by the Committee under section 19A(13), which is repealed by **clause 6(17)**. However, as noted above, some of the elements of that section remain relevant in the context of determining whether a grower is an efficient grower under section 15(c).

Clause 6(20) repeals sections 27 and 28, which are no longer relevant to the operation of the Act.

Clause 7 *Eastern Goldfields Transport Board Act 1984* amended

The clause makes two changes to the Act, both of which reflect the principle that unless there is clear justification, government businesses (such as the Eastern Goldfields Transport Board) should not have advantages over other businesses simply due to their public status.

Clause 7(2) removes the Crown agency status of the Board.

Clause 7(3) removes the Board's exemption from rates under the *Local Government Act 1995*.

Clause 8 *Edith Cowan University Act 1984* amended

The intention of the amendments to this Act is to provide Edith Cowan University's Council with similar investment and trust powers as are available to Western Australia's other public universities under their several enabling statutes. Variations between the enabling statutes mean that this Act once amended will not have identical form to the relevant provisions of any of the other University statutes.

Clause 8 repeals section 38 of the Act, which gives the Council of Edith Cowan University limited power to invest moneys but does not give any powers to act as trustee of moneys or property. The clause replaces section 38 with three new sections, based in part on the investment and trustee provisions under the *Murdoch University Act 1973*.

New section 38 provides the Council with powers to invest moneys in securities and to sell securities.

New section 38A empowers the Council to act as trustee or manager of property or moneys held on trust by the University, and to apply the property or moneys where not immediately required for the purposes of the trust. The clause does not detail the constraints that will apply to the Council, as these are determined by general trust law including the *Trustees Act 1962*. The power to "apply" moneys is a broad power that includes power to invest, for example in land or in improvements to University land.

New section 38B deals with repayment of trust moneys applied. Moneys applied under new section 38A(b) are taken to be a loan to the University from the trust. The loan is repayable by the Council with interest at the rate approved by the Minister, subject to a 25 year limit on repayment.

Clause 9 *Gold Corporation Act 1987* amended

The amendments to this Act are intended to impose on Gold Corporation (and its subsidiaries Goldcorp and the Mint) obligations to pay charges and taxes in a similar manner to other State government trading enterprises. The principle behind the amendments is that government businesses should be subject to similar trading conditions as their private sector counterparts unless there is good reason otherwise.

Clause 9(2) removes the obligation of Gold Corporation to pay local government rates and charges in respect of land used exclusively for Gold Corporation's purposes.

The clause is replaced by standard provisions concerning a government trading enterprise's liability for local government rates and charges, based on those applying to the Water Corporation. Those provisions, forming new sections 4(6), (7) and (8), require Gold Corporation to pay to the Consolidated Fund a sum equal to the amount of local government rates and charges that would be payable but for the exemption. This amount is sometimes referred to as a "local government rate equivalent". The Treasurer may direct principles for determining the amount and times for payment.

Clause 9(3) repeals section 20, which sets out an obligation for the Gold Corporation to pay amounts equivalent to income tax that would be payable if Gold Corporation were subject to Commonwealth taxes.

It is intended that section 20 will be replaced by a similar obligation under the *State Enterprises (Commonwealth Tax Equivalents) Act 1996*. This will require inclusion of Gold Corporation as a prescribed State entity in regulations under that Act. No amendment to either Act is required. Following these

changes, Gold Corporation will be subject to the same taxation regime as other government trading enterprises.

Clause 9(4) is a consequential amendment to clause 9(3).

Clause 9(5) inserts a new section 23 empowering the Treasurer to fix a charge payable by Gold Corporation and its subsidiaries to the Consolidated Fund in respect of a Treasurer's guarantee given under section 22. The Treasurer may direct times and instalments for payment of the charge, sometimes referred to as a "guarantee charge". The charge compensates for the competitive advantage that the Treasurer's guarantee confers on the Gold Corporation, Goldcorp and the Mint, as against their private sector counterparts who would have to enter into a commercial arrangement to obtain a similar guarantee from, say, a bank.

Clause 9(6)(a) removes the Mint's liability for local government rates and charges, while **clause 9(6)(b)** replaces this liability with the standard local government rate equivalent regime (in the same way as clause 9(2) does for Gold Corporation and clause 9(8) does for GoldCorp).

Clause 9(6)(b) also repeals current section 35(7), thereby removing the exemption from any rate, tax or imposition that currently applies to land vested in The Director of The Perth Mint or Western Australian Mint under the Act. This exemption is an historical relic of the previous status of the Mint as the Perth Branch of the UK Royal Mint and is no longer appropriate.

Clause 9(7) is a consequential amendment to clause 9(3). As a subsidiary of Gold Corporation, the Mint will not be prescribed as a separate entity for the purposes of the *State Enterprises (Commonwealth Tax Equivalents) Act 1996*. Currently, the income tax equivalent payment by the Mint is calculated under section 44 as a proportion of Gold Corporation's tax payment under section 20. Section 44 will continue to have the same effect, except that Gold Corporation's payments will be made under the abovementioned Act, rather than section 20.

Clause 9(8)(a) removes Goldcorp's liability for local government rates and charges, while **clause 9(8)(b)** replaces this liability with the standard local government rate equivalent regime (in the same way as clause 9(2) does for Gold Corporation and clause 9(6) does for the Mint).

Clause 9(9) is a consequential amendment to clause 9(3), with the same effect for Goldcorp as clause 9(7) has for the Mint.

Clause 10 *Hire-Purchase Act 1959* amended

Clause 10(2) repeals section 1(4) of the Act, which currently provides that the Act applies to hire-purchase agreements entered into from the commencement of the Act. Other amendments below re-define the Act's application.

Clause 10(3) inserts a new section 1A determining the application of the Act from the time these amendments commence.

New section 1A(1) has the effect that the Act will remain in force, unchanged by this Bill, in respect of hire-purchase agreements that are in place prior to the commencement of this section of the Bill.

New section 1A(2) provides that the Act does not apply to hire-purchase agreements entered into after commencement (defined by new section 1A(8) as "exempt" hire-purchase agreements), subject to some sections being continued as set out in the remainder of the section.

The scope of the ongoing application of the Act to relevant hire-purchase agreements is determined by new sections 1A(3), (4), (5), (6) and (7). The sections of the Act that have ongoing application to hire-purchase agreements are sections 2, 13(1) and (2) (partially amended), 15 (other than subsections (1)(a), (4) and (5)), 17, 24 (other than subsection 24(6)(a)) and 25.

Section 2 is the definitions section.

Section 15, which sets out the hirer's rights and immunities when goods are re-possessed, has ongoing operation apart from subsections 15(1)(a), (4) and (5). Those subsections are contingent on notice requirements elsewhere in the Act that will not have ongoing operation, making it inappropriate to continue those subsections in operation. Section 17 also has ongoing effect, to allow courts to give effect to section 15.

Section 24, which empowers a court to re-open certain hire-purchase transactions on equitable grounds, has ongoing operation apart from subsection 6(a). That subsection is contingent on notice requirements elsewhere in the Act that will not have ongoing operation, making it inappropriate to continue the subsection in operation.

Section 25, which provides additional protection for certain goods hired by a farmer, continues in operation unchanged in itself. However, its operation is affected by new section 1A(3)(a). That section continues section 13(1) and (2) for the purposes of section 25, but replaces the requirement for a notice under section 13(1) to be in the form of the Third Schedule with a requirement that the notice be to the effect of the Third Schedule.

Clause 11 *Licensed Surveyors Act 1909* amended, and transitional

Clause 11(2)(a) removes the ex officio appointment of the Surveyor General as the chairman of the Land Surveyors Licensing Board. Instead, **clause 11(3)** provides for the Governor to appoint one of the members of the Board as chairman.

Clause 11(2)(b) replaces the appointment to the Board of two members nominated by the Surveyor General, at least one of whom must be a licensed surveyor, with the appointment of two more broadly representative members. The member nominated by the chief executive officer of the Board is to represent interests in relation to land registration matters, while the member nominated by the Minister is to represent the interests of users of licensed surveyors' services.

Clause 11(2)(c) clarifies that the licensing surveyors appointed to the Board under section 4(1)(c) are to hold practising certificates. Additionally, **clause 11(3)** requires one other person appointed under section 4(1) to be a licensed surveyor who holds a practising certificate.

Clause 11(3) repeals section 4(1a), which imposes transitional arrangements dating from 1976 that are no longer needed.

Clauses 11(4) and (5) make amendments consequential upon the altered arrangements for appointments to the Board, while **clause 11(6)** corrects a minor apparent anomaly in the operation of section 4(5a).

Clause 11(7) repeals the licensing requirement that an applicant be of good fame and character, which is regarded as overly discretionary. Instead, the clause provides a more detailed rule that prohibits the grant of a licence in various circumstances where an applicant has committed or been charged with an offence involving fraud or dishonesty.

Clause 11(8) deletes section 26A(3)(c), which provides that regulations may be made relating to the approval of insurers and the issue of certificates of insurance to persons covered by professional indemnity insurance and may prescribe the form of those certificates. This degree of regulation is overly prescriptive.

Clauses 11(9) and (10) are transitional sections providing for continuity of appointments to the Board until the 31 December following the commencement of the Act.

Clause 12 *Racing Restriction Act 1917* amended

Clause 12(2) deletes section 2(1) and replaces it with a new version that differs in two ways.

First, the category of race meetings subject to Western Australian Turf Club licensing is narrowed, from all horse and pony races to only thoroughbred races. **Clause 12(3)** is amended in consequence. The term "thoroughbred" is not defined, in keeping with the approach taken in other jurisdictions and also due to the impracticality of the State seeking to define a term that is in national and international use. It is not expected that this will cause any difficulty in applying the section.

Second, it is clarified that race meetings covered by the licensing requirement are not only those held for stake or prize, but also those held for the purposes of betting.

Clause 12(4) repeals section 2(2b), which concerns race meetings in aid of any public hospital or other charitable or patriotic purpose. The provision is no longer used and has no substantive impact.

Clause 12(5) inserts a new section 3(1) that clarifies that trotting race meetings covered by the section's licensing requirement are not only those held for stake or prize, but also those held for the purposes of betting.

Clause 12(6) repeals section 3(4), which concerns trotting race meetings in aid of any public hospital or other charitable or patriotic purpose. The provision is no longer used and has no substantive impact.

Clause 12(7) inserts new sections 3A, 3B, 3C and 3D allowing Approved Racing Organisations (AROs) to conduct horse and pony races and race meetings other than thoroughbred and trotting racing.

New section 3A limits the right to conduct races and race meetings, other than thoroughbred and trotting racing, to AROs conducting meetings in accordance with the Minister's approval of them under new section 3B. Section 3A also includes provisions relating to changes to the programme of race meetings customarily conducted by the ARO in the metropolitan area, drawn from similar provisions applying to thoroughbred and trotting racing.

New section 3B sets out the process for obtaining approval as an ARO. Under **new section 3B(1)**, an applicant for approval by the Minister must be a body corporate and have the capacity to hold horse and pony races and race meetings and to ensure that they are conducted honestly and free from criminal influence.

New section 3B(2) requires an applicant to provide a copy of the rules under which it proposes to hold race meetings, details of the kinds of races proposed, details of the relevant racecourse(s) and other information the Minister requires to properly consider the application.

New section 3B(3) allows the Minister to approve an application where the applicant has met the application requirements and approval is not contrary to the public interest. Approval is discretionary, not as of right, although the intention of the amendments is that forms of racing other than thoroughbred and trotting racing should be allowed to emerge if the conditions for approval are met.

Under **new section 3B(4)**, the Minister may also place conditions on an approval, which under **new section 3B(5)** includes approval of the ARO's rules. If the Minister refuses approval, **new section 3B(6)** requires the Minister to give reasons in writing for the decision. **New section 3B(7)** prevents the Minister approving an ARO in relation to the holding of race meetings or races that include thoroughbred or trotting racing.

New section 3C allows flexibility in relation to two matters forming part of an ARO's operating environment – the conditions applying to an approval under new section 3B(4), and the ARO's rules approved by the Minister under new section 3B(5). The Minister can add to, revoke or vary the conditions on the Minister's own initiative or on application of the ARO, while the ARO's approved rules can be varied only on the application of the ARO.

New section 3D sets out the conditions under which revocation of an approval of an ARO may occur. If the Minister is satisfied that an ARO no longer meets the requirements of section 3B(1) the Minister must revoke the approval. If the Minister is satisfied that that an ARO has contravened a provision of the Act, the Minister has discretion whether to revoke approval.

Clause 12(8) inserts a new definition of "trotting race meeting", consistent with the existing definition of "race meeting". It also defines "trotting racing" to clarify that the term includes pacing and harness racing.

Clause 13 *Sandalwood Act 1929* amended

The clause deletes section 3(2) of the Act. That section prevents the quantity of sandalwood authorised for removal under licences relating to alienated land (excluding plantations) comprising more than 10% of the State's total authorised annual sandalwood removal. The deletion will have the effect of allowing licences to be granted in accordance with generally applicable State environmental laws and policy rather than according to whether the sandalwood is located on Crown or alienated land.

Clause 14 *Valuation of Land Act 1978* amended, and transitional

Clause 14(2) replaces section 6(3) of the Act with a more general provision governing who may be appointed Valuer-General. **Clause 14(3)** is a transitional provision continuing the appointment of the present office-holder.

Clause 14(4) clarifies that information released under section 14 can be released to the public at large, as well as to a particular class of persons.

Clause 14(5) inserts a new section 16A giving the Minister an entitlement to have and retain copies of information in the possession of the Valuer-General. This power is expected to improve the Minister's ability to make decisions about release of information under section 14.

Clause 14(6) repeals section 25(2).

Clause 15 Western Australian Greyhound Racing Authority Act 1981 amended

This clause repeals section 30 of the Act.