



Department of Consumer
and Employment Protection
Government of Western Australia

REVIEW OF
BOARDS AND COMMITTEES
IN THE CONSUMER AND EMPLOYMENT PROTECTION
PORTFOLIO

Final Report

April 2005

Associated Documents:

Review of Boards and Committees - Background Paper: December 2001 (Department of Consumer and Employment Protection)

Review of Consumer Protection Boards and Committees - Issues Paper: February 2002 (Department of Consumer and Employment Protection)

Consultation Draft – Report on the Review of Boards and Committees in the Consumer and Employment Protection Portfolio: December 2002 (Department of Consumer and Employment Protection)

Final Report - Review of Boards and Committees in the Consumer and Employment Protection Portfolio

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EXECUTIVE SUMMARY

This report finalises the review of Boards and Committees in the Consumer and Employment Protection Portfolio. Various options for the future role and functions of boards and committees were presented in the Consultation Draft. This report provides an updated analysis of these options and outlines the final model for implementation.

Context of the Review

The review was undertaken in the context of various Government initiatives, including the Machinery of Government reform program and the proposal to establish the State Administrative Tribunal (SAT). The review also took into account recommendations arising out of the Gunning Committee of Inquiry into Fair Trading Boards and Committees and the Temby Royal Commission into the Finance Broking Industry.

Process of the Review

The Terms of Reference for the review were endorsed by the Minister for Consumer and Employment Protection during December 2001.

The scope of this review included the following consumer protection boards and committees:

- Builders' Registration Board
- Building Disputes Tribunal
- Electrical Licensing Board¹
- Hairdressers Registration Board
- Land Valuers Licensing Board
- Motor Vehicle Industry Board²
- Painters' Registration Board
- Plumbers Licensing Board
- Real Estate and Business Agents Supervisory Board
- Settlement Agents Supervisory Board
- Charitable Collections Advisory Committee
- Consumer Product Safety Committee
- Home Buyers Advisory Committee
- Petroleum Products Prices Advisory Committee
- Retail Shops Advisory Committee

¹ The Electrical Licensing Board (ELB) was added to the review when it joined the Consumer and Employment Protection Portfolio. However, this report does not propose changes to the ELB and is only concerned with Consumer Protection boards and committees.

² The Motor Vehicle Industry Board replaced the Motor Vehicle Dealers Licensing Board in December 2004.

An Issues Paper for the review, which canvassed various options for the future of the boards and committees, was prepared and distributed during February 2002. Following the release of the Issues Paper, 41 submissions were received from various stakeholders in relation to the matters being considered in the review.

A Consultation Draft was subsequently released to boards and other stakeholders, which analysed the submissions received and considered other matters, such as broad government initiatives, in determining the relative merits of the options outlined in the Issues Paper. The Consultation Draft recommended an initial model for the future of the boards and committees. Following release of the Consultation Draft in December 2002, stakeholders were invited to provide comment in relation to the initial model. Thirty-one submissions were received. The model was altered to take account of concerns raised in the submissions.

This report summarises the material provided in the Consultation Draft, analyses the submissions made in relation to that report and outlines a final model in relation to the future role for the boards and committees in the Consumer and Employment Protection portfolio.

Recommendations of the Review

The model outlined in the Consultation Draft (the initial model) was based on a proposal for Departmental Regulation with the boards undertaking a strategic advisory role. However, following release of the Consultation Draft, it was evident that many stakeholders supported the retention of some decision-making functions by the boards.

The final model involves the consumer protection boards retaining a decision-making role in relation to licensing and registration, and in the determination of payments from fidelity funds. The consumer protection boards would also have a strategic role in providing policy advice to the Minister for Consumer and Employment Protection and DOCEP.

Under the final model, the Commissioner for Fair Trading and the Department of Consumer and Employment Protection (DOCEP) would assume responsibility for compliance programs and investigations, the making of allegations to the SAT for disciplinary matters, development of codes of conduct, conciliation of complaints, and education and advice programs.

The SAT, which commenced operation in January 2005, has assumed responsibility for disciplinary hearings and hearing appeals against licensing decisions of the boards and administrative decisions of the Commissioner or the Department. Under the final model, the boards' approval will be sought by the Commissioner when disciplinary matters are referred to the SAT.

The following table sets out the delineation of responsibilities for the major functions of the boards, DOCEP and the SAT under the final model.

Table 1: Delineation of responsibilities under the recommended model

FUNCTION	RESPONSIBILITY/ROLE		
	Boards	DOCEP / Commissioner	SAT
Licensing	Act as principal licensing authorities and make decisions about granting of licences or registration. Provide advice upon which the qualifications required for licensees will be based.	Process applications for licences in accordance with criteria established in consultation with the boards. Provide administrative support to boards with regards to the licensing function.	Hear appeals against licensing decisions of the board.
Management of fidelity funds	Make determinations regarding payments from the fidelity fund as an administrative function, in response to cases and recommendations provided by DOCEP. ³	Prepare cases for claims against the fidelity fund and makes recommendations to the board regarding each claim.	Hear appeals against fidelity fund decisions.
Compliance	Must be provided with reports about compliance programs and the outcome of compliance actions by DOCEP. Make recommendations to the Minister or the Director General/Commissioner regarding compliance policies and programs. Provide advice in relation to specific compliance issues at the request of the Minister or the Director General/Commissioner.	Investigate complaints and allegations of misconduct. Provide regular reports to the boards regarding compliance programs and issues.	
Disciplinary hearings	Receive advice from DOCEP about all matters to be referred to the SAT and approve such referrals. ⁴ Must be provided with reports about the outcome of disciplinary cases before the SAT or courts. Provide advice to Minister and/or Director General/Commissioner on systemic problems in industry.	Prepare disciplinary cases appropriate to be heard by the SAT or courts. Provide advice to the boards regarding cases to be referred to the SAT. Make allegations and present disciplinary cases before the SAT. Report to the boards on the outcome of disciplinary proceedings.	Hear disciplinary cases presented by DOCEP/Commissioner. Make orders for disciplinary action.
Codes of Conduct	Must advise the Minister and/or Director General regarding the provisions of the Codes and the standards and specifications included in Codes.	Develop Codes of Conduct for industry participants in consultation with the boards.	

³ If no decision on a claim is made by the relevant board within 60 days of the board receiving a recommendation from DOCEP, the claim will be deemed to have been approved.

⁴ Should there be disagreement between a board and the Commissioner about referral of a matter to the SAT, the Commissioner will be able to continue with an action but would be required to notify the Minister of this decision.

FUNCTION	RESPONSIBILITY/ROLE		
	Boards	DOCEP / Commissioner	SAT
Fixing maximum fees	Advise the Minister and Commissioner about maximum fee schedules if applicable.	Develop maximum fee schedules if applicable.	
Policy advice to Minister	Make recommendations to the Minister in relation to legislation and relevant regulatory matters.	Provide policy advice to Minister.	
Advice	Make recommendations to the Minister and/or Director General/Commissioner relating to programs for providing advice to consumers or industry.	Provide advice to consumers and industry.	
Information and education programs	Advise the Minister and Commissioner regarding educational programs for the community and industry.	Develop and deliver educational programs for the community and industry.	
Conciliation	Receive reports about conciliation programs. Provide advice to the Minister, Commissioner or Director General regarding issues relating to the conciliation program.	Conciliate complaints. Provide reports to the boards about the conciliation of complaints, and in particular, any emerging trends.	
Allocation and management of non-CF funds (licence and registration fees)	Where a board is currently "self-funded" the board will negotiate Resource Agreements with the Department to govern the allocation of non-CF, industry-specific funds. The board will receive regular reports from DOCEP on expenditure of non-CF funds and raise with the Minister any issues in that regard.	Resource agreements will govern allocation and expenditure of non-CF funds. ⁵ Department to participate in negotiation of Resource Agreements. Department to administer funds in accordance with resource agreements. Monitor expenditure of non-CF funds against commitments in the Resource Agreements. Must provide regular reports on expenditure of non-CF funds to the board and the Minister.	
Staff supporting boards	Participate in the selection panel for the relevant Registrar, Secretary or Executive Officer, with board members comprising 50% of the selection panel.	Provide staff to support the operation of all of the boards. Appoint a Registrar, Secretary or Executive Officer to support the board.	

⁵ Any variation in expenditure from allocations in Resource Agreements to occur only with prior written approval of the Minister.

In implementing the final model, the following issues will need to be addressed.

- The name of each board would need to be reconsidered to ensure that it is representative of its role and functions.
- It is recommended that board membership should be balanced, including persons with industry, consumer and public interest experience and expertise.
- Board members should be appointed through a transparent appointment process using appropriate selection criteria. Membership should be based on appropriate qualifications and expertise rather than representational status.
- Remuneration for board members should be reviewed and, if possible, standardised. Remuneration should adequately take into account the time required to be spent by members on board matters, including non-sitting time.
- The recommendations of the Auditor General in relation to public sector boards⁶ should be applied where relevant.
- Clear, consistent codes of conduct or governance standards for board members, and procedures for board meetings, should be developed and implemented, and provided to board members as part of an induction process.
- The boards should be supported administratively by the Department with all staff supporting the boards to be Departmental employees.
- Appropriate delegations powers should be included in the legislation where necessary.
- Legislative implementation of the model should provide an opportunity to apply consistent provisions across the statutes regulating occupational groups. If this approach is adopted, the Department would need to develop and implement appropriate and consistent practices in relation to processing of licence applications, dealing with complaints, investigations and reporting.
- The Department should ensure that Departmental employees are adequately qualified and trained in order to perform the licensing and compliance and other functions.
- The Department would need to perform an information management function and assume responsibility for recording and maintaining systems containing registers of licensees, records of SAT disciplinary decisions, details of board decisions, policy documents and other relevant information. The Department would also be responsible for making this information available to the boards, officers of the Department and, where appropriate, the public.

⁶ Auditor General *Public Sector Boards - Boards Governing Statutory Authorities in Western Australia* (Report No 9 – November 1998) pages 12/13.

- Communication mechanisms between the boards and the staff supporting them, and within the Department, should be developed. Appropriate provisions should be included in the legislation to allow a transfer of information between relevant bodies.
- Consideration will need to be given to the implications of the amendments made by the SAT legislation. For example, all provisions concerning “proceedings” have been repealed. Accordingly, procedures for determination of licence applications, objections and fidelity fund claims will need to be formalised.
- The boards and the Department must be adequately resourced to undertake their respective functions.
- Management of funds held by the boards, such as fidelity guarantee funds, general purpose and education funds and the Home Buyers Assistance Fund, should be transferred to Treasury. Decisions about the allocation of those funds should reside with the boards and the Department.
- The Building Disputes Tribunal should be retained and continue to determine contractual and workmanship disputes in relation to building work.
- The SAT legislation transferred the licensing functions of the Commercial Tribunal and Local Court in relation to debt collectors, travel agents, employment agents and credit providers to the Commissioner for Fair Trading. Management of these licensing and compliance functions should be carried out, as far as possible, in a consistent manner to the occupations regulated by the boards.

The final model will achieve the following outcomes.

- In accordance with the Machinery of Government Taskforce, the functions that can be appropriately performed by the Department will be transferred to DOCEP.
- The model addresses the inherent structural problems of a system of regulation reliant on part-time boards that was raised by the Gunning Inquiry, by clearly placing responsibility for compliance programs with the Commissioner for Fair Trading.
- The Department will be fully accountable for the compliance function and will be in a position to develop streamlined processes and consistent approaches.
- Natural justice concerns will be addressed by separating compliance and disciplinary functions.
- Industry and consumer representatives on the boards will provide advice to the Minister and the Department as appropriate, thereby ensuring that industry knowledge and expertise are retained in the process.

Recommendations in relation to the Advisory Committees

It is recommended that the Retail Shops Advisory Committee, the Consumer Products Safety Committee and the Petroleum Products Prices Advisory Committee be retained in their current forms. It is recommended that the Home Buyers Advisory Committee be disbanded and its functions assumed by the Department and the Real Estate and Business Agents Supervisory Board.

A review of the *Charitable Collections Act 1946 (WA)* is currently being undertaken and the continued existence and role of the Charitable Collections Advisory Committee is being considered as part of that review. It is intended that the current *Charitable Collections Act 1946 (WA)* and the *Street Collections (Regulation) Act 1940 (WA)* be updated and replaced with the *Public Collections Bill*. While the Bill as drafted does not specifically provide for an advisory committee, it is possible for the Commissioner to establish an advisory committee on an administrative basis. As with the boards, it is recommended that committee members be provided with appropriate induction, and be guided by appropriate governance standards.

The proposed model for committees will achieve the following outcomes:

- the aims articulated by the Machinery of Government Taskforce will be met by transferring those functions that can adequately be performed by a government Department to DOCEP; and
- where necessary, committee input and expertise will be retained in the process.

GLOSSARY OF SOME TERMS USED IN THIS REPORT

boards	the boards that are the subject of this review
committees	the committees that are the subject of this review
Commissioner	the Commissioner for Fair Trading
Consultation Draft	the second report produced as part of the consultation process for the review of boards and committees in the Consumer and Employment Protection portfolio titled <i>Draft Consultation Report – Review of Boards and Committees in the Consumer and Employment Protection Portfolio (December 2002)</i>
Department or DOCEP	the Department of Consumer and Employment Protection
final model	the model (outlined in this report) for the future role and functions of boards and committees, which is recommended for implementation
Gunning Committee	Gunning Committee of Inquiry into Fair Trading Boards and Committees
Gunning Report	Report of the Gunning Committee of Inquiry into Fair Trading Boards and Committees (December 2000)
Issues Paper	the first report produced as part of the consultation process for the review of consumer protection boards and committees titled <i>Issues Paper – Review of Consumer Protection Boards and Committees (February 2002)</i>
Machinery of Government Taskforce	Taskforce established to review Machinery of Western Australia's Government
Minister	Minister for Consumer and Employment Protection
Ministry	Ministry of Fair Trading, the government agency previously responsible for consumer protection and fair trading, now the Consumer Protection Division of DOCEP
initial model	the model recommended in the Consultation Draft for reform of boards and committees
SAT	State Administrative Tribunal (initially called the Western Australian Civil and Administrative Tribunal)
SAT Legislation	The <i>State Administrative Tribunal Act 2004</i> and the <i>State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004</i>
SAT Report	Taskforce Report on the Establishment of the State Administrative Tribunal (May 2002)
SAT Taskforce	Taskforce established by Attorney General in March 2001 to develop a model of a civil and administrative review tribunal for consideration by Government
Temby Royal Commission	Royal Commission into the Finance Broking Industry
Temby Report	Report of the Royal Commission into the Finance Broking Industry (December 2001)
WACART	Western Australian Civil and Administrative Review Tribunal, now known as the State Administrative Tribunal (SAT)

1 BACKGROUND

- 1.1 This report has been prepared as part of the process of reviewing the structure and functions of a number of boards and committees in the Consumer and Employment Protection portfolio.
- 1.2 The review was undertaken in response to various Government initiatives, including the Machinery of Government reform program and the proposal to establish the State Administrative Tribunal. The review also took into account recommendations arising out of the Gunning Committee of Inquiry into Fair Trading Boards and Committees and the findings of the Temby Royal Commission into the Finance Broking Industry.

Machinery of Government

- 1.3 In March 2001, the State Government established a Machinery of Government Taskforce to review the number of departments, statutory authorities, boards and committees in the Western Australian public sector and to recommend a package of proposals that would enhance the operation of the machinery of government.
- 1.4 In considering the functions performed by many statutory authorities, the Taskforce recommended a package of proposals that would enhance the operation of the machinery of government. The Taskforce made, *inter alia*, the following recommendation:

“The functions of each statutory authority in the Western Australian public sector should be reviewed by 1 July 2002 to assess the appropriateness and feasibility of incorporating those functions into departments of State...”⁷

State Administrative Tribunal

- 1.5 Coinciding with the Machinery of Government review, a SAT Taskforce was established by the Attorney General to develop an appropriate model of an administrative review body. Initially referred to as the Western Australian Civil and Administrative Review Tribunal (WACART), the final name of the body became the State Administrative Tribunal (SAT).
- 1.6 The review of the administrative appeals system has its origins in a 1982 report of the WA Law Reform Commission, entitled *Report on Review of Administrative Decisions: Appeals*, which identified the need for a more coherent and rational appeals system. In 1999 the Commission recommended establishment of a review body to amalgamate the adjudicative functions of all existing boards and tribunals (except those in the industrial relations and WorkCover areas)⁸.

⁷ The Machinery of Government Taskforce. (June 2001). *Government Structures for Better Results – The Report of the Taskforce Established to Review the Machinery of Western Australia’s Government*. Recommendation 9 page iii.

⁸ Law Reform Commission of Western Australia. (1999) *Review of the Criminal and Civil Justice System*.

- 1.7 The Report of the SAT Taskforce (the SAT Report), which was released on 4 July 2002, recommended establishment of the SAT. The *State Administrative Tribunal Act 2004* and the *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* were passed in November 2004.
- 1.8 The SAT commenced operation in January 2005. The SAT acts as an appeals body for a range of administrative decisions. The SAT has also assumed all or most of the disciplinary and adjudicative functions of various professional, occupational and business licensing boards and tribunals in Western Australia, including all of the Consumer Protection boards that are the subject of this review.
- 1.9 The SAT Report was released after the first phase of consultation for this review was completed. Stakeholders' submissions were made without knowledge of the SAT Taskforce's recommendations or the impact of the SAT legislation. Accordingly, the analysis of those submissions was not able to take account of the final recommendations of the SAT Report.
- 1.10 However, the recommendations of the SAT Report were included in the Consultation Draft. Part 5 of this report sets out the impact of the SAT in relation to the functions of the boards and the Department.

Gunning Inquiry

- 1.11 In February 2000 the then Minister for Fair Trading established the Gunning Committee of Inquiry into Fair Trading Boards and Committees (the Gunning Committee). The Gunning Committee was directed by the then Premier and Minister for Public Sector Management to conduct a Special Inquiry pursuant to section 11(1) of the *Public Sector Management Act 1994 (WA)*.
- 1.12 The Gunning Committee reviewed and reported on the effectiveness and efficiency of eight boards and committees in the Consumer and Employment Protection portfolio, and produced two reports⁹. These reports contained a number of recommendations in relation to consumer protection boards and committees. The second of these reports, published in December 2000, (the Gunning Report) is of particular relevance to a number of the boards examined in this review¹⁰.
- 1.13 Administrative changes to the operation of many of the boards and the Department of Consumer and Employment Protection have been implemented, based on the recommendations of the Gunning Committee. However, structural changes recommended by the Gunning Committee have not yet been addressed and are being considered as part of this review. Part 4 of this Report outlines the relevant findings of the Gunning Committee.

⁹ Gunning Committee. (September 2000). *Report of the Gunning Committee of Inquiry into the Finance Brokers Supervisory Board*.

Gunning Committee. (December 2000). *Report of the Gunning Committee of Inquiry into Fair Trading Boards and Committees*.

¹⁰ The following boards were examined by the Gunning Committee and included in the second report: Real Estate and Business Agents Supervisory Board; Land Valuers Licensing Board, Settlement Agents Supervisory Board, Builders' Registration Board, Building Disputes Tribunal, Painters' Registration Board and Motor Vehicle Industry Board.

Temby Royal Commission

- 1.14 The Temby Royal Commission into the Finance Broking Industry commenced on 25 June 2001. The Royal Commission was appointed to enquire into and report on whether there had been unlawful or improper activities or practices relating to the finance broking industry in Western Australia since 1994. The terms of reference also required the Commissioner to report on whether the conduct of the relevant State regulatory authorities, in relation to the above, was adequate in all the circumstances.
- 1.15 The Temby Royal Commission examined both the Finance Brokers Supervisory Board and the Land Valuers Licensing Board.
- 1.16 The Report of the Temby Royal Commission (the Temby Report) was provided to the Attorney General on 21 December 2001 and subsequently tabled in Parliament. That report recommends the repeal of the *Finance Brokers Control Act 1975 (WA)*, which would result in abolition of the Finance Brokers Supervisory Board. The Government has advised that it will implement the recommendation to abolish the Finance Brokers Supervisory Board¹¹. As a result, the current review has not included the structure and operations of the Finance Brokers Supervisory Board. Nevertheless, relevant issues arising out of the Temby Royal Commission are taken into account in reviewing the other consumer protection boards and committees.

¹¹ The *Finance Brokers Control Amendment Act 2004* was passed in November 2004.

2 REVIEW PROCESS

Terms of Reference

- 2.1 The review of Consumer Protection boards and committees was requested by the Minister for Consumer and Employment Protection in November 2001. The terms of reference for the review are included as Appendix A to this report.

Department of Premier and Cabinet Guidelines

- 2.2 In March 2002 the Department of Premier and Cabinet provided the guidelines set out at Appendix B for reviews of boards and committees within the various government portfolios. These guidelines have also been taken into account in conducting this review.

Boards and Committees being reviewed

- 2.3 The scope of this review covers the following regulatory boards:

- Builders' Registration Board
- Building Disputes Tribunal
- Hairdressers Registration Board
- Land Valuers Licensing Board
- Motor Vehicle Industry Board
- Painters' Registration Board
- Plumbers Licensing Board
- Real Estate and Business Agents Supervisory Board
- Settlement Agents Supervisory Board

- 2.4 The following advisory committees are also considered by this review:

- Charitable Collections Advisory Committee
- Consumer Product Safety Committee
- Home Buyers Advisory Committee
- Petroleum Products Prices Advisory Committee
- Retail Shops Advisory Committee

- 2.5 Two of the boards, the Hairdressers Registration Board and the Plumbers Licensing Board, were moved into the Consumer and Employment Protection portfolio prior to the initial consultation phase as part of the Machinery of Government restructuring. As such, these two boards were included in the review.
- 2.6 This review has not had regard to the structure and operations of the Finance Brokers Supervisory Board. The current Government has indicated its intention to abolish the board in line with recommendations of the Temby Report¹².
- 2.7 The Building Disputes Tribunal, which operates under the auspices of the Builders' Registration Board, although not a board or committee, is also included in this review. The Tribunal is funded by the Builders' Registration Board. Any changes to the structure of the boards will impact on the operation of the Building Disputes Tribunal. As such, its operation and functions have been taken into account.

Review Process

- 2.8 A project team comprising staff from the Department of Consumer and Employment Protection undertook the review. A steering committee was appointed to oversee the process.

Issues Paper

- 2.9 An Issues Paper¹³ was published and distributed in relation to this review. The Issues Paper presented a number of options for the future role and functions of boards and committees. In formulating the options, the paper outlined various Government initiatives, such as the Machinery of Government review, the proposal to establish the SAT and the findings of the Gunning Committee of Inquiry and the Temby Royal Commission. The Issues Paper also considered the regulatory systems of other states of Australia.
- 2.10 During February 2002, a number of stakeholders were provided with a copy of the Issues Paper for comment. These stakeholders included the boards and committees the subject of the review, representatives of industry and consumer groups, State and Federal government bodies and educational institutions.
- 2.11 As part of the consultation process, an advertisement was placed in *The West Australian* newspaper on 27 February 2002 notifying the public of the review and calling for submissions. A copy of the Issues Paper was also placed on the Department of Consumer and Employment Protection website.

¹² The *Finance Brokers Control Amendment Act 2004* was passed in November 2004 and will come into operation on proclamation.

¹³ Department of Consumer and Employment Protection. (February 2002). *Review of Consumer Protection Boards and Committees – Issues Paper*

- 2.12 Submissions to the Issues Paper were received from 41 stakeholders, who are listed at Appendix C. Meetings were held with stakeholders as requested. The majority of submissions received from organisations were from the various boards and committees themselves, industry associations and government entities. Individual submissions were mainly received from members of boards and committees.

Draft Consultation Report

- 2.13 In December 2002, a further report, the Review of Boards and Committees in the Consumer and Employment Protection Portfolio – Draft Consultation Report (Consultation Draft)¹⁴ was released. The Consultation Draft weighed up the various options for the future role of the boards and committees contained in the Issues Paper, by taking into account:
- a) the submissions received in response to the Issues Paper;
 - b) financial information provided by the boards;
 - c) independent research and analysis, for example, from a zero based assessment with regard to public views about the Department that was broader than the views contained in the submissions received;
 - d) the structures of the regulatory bodies in other jurisdictions in Australia; and
 - e) the findings of various government inquiries and reports¹⁵.
- 2.14 The above material was analysed in developing a model for the continuing role of boards and committees.
- 2.15 During December 2002, copies of the Consultation Draft were distributed to board and committee members, board staff and industry and consumer bodies for comment. Stakeholders were asked to provide submissions in response to the Consultation Draft by mid February 2003. A list of submissions received in relation to the Consultation Draft is at Appendix C.
- 2.16 During the consultation process, a number of briefings with the boards were held to explain the findings of the Consultation Draft. In addition, meetings with other stakeholders were provided, as requested.

¹⁴ Department of Consumer and Employment Protection. (December 2002). *Review of Boards and Committees in the Consumer and Employment Protection Portfolio – Draft Consultation Report*.

¹⁵ Auditor General *Public Sector Boards - Boards Governing Statutory Authorities in Western Australia* (Report No 9 – November 1998).

Gunning Committee. (September 2000). *Report of the Gunning Committee of Inquiry into the Finance Brokers Supervisory Board*.

Gunning Committee. (December 2000). *Report of the Gunning Committee of Inquiry into Fair Trading Boards and Committee*.

The Machinery of Government Taskforce. (June 2001). *Government Structures for Better Results – The Report of the Taskforce Established to Review the Machinery of Western Australia's Government*.

Report of the Royal Commission into the Finance Broking Industry (December 2001).

- 2.17 Following receipt of submissions and as a result of concerns raised by stakeholders, the model for the future role of consumer protection boards was altered by providing for retention of significant decision making functions by the boards with regards to licensing and fidelity fund claims.

Final Report

- 2.18 This report finalises the analysis of the various models for the future role and functions of the boards and committees in the Consumer and Employment Protection portfolio. This report considers stakeholder responses to the initial model outlined in the Consultation Draft and presents the final model for implementation¹⁶.

¹⁶ References to submissions received in response to the Consultation Draft are identified in this report by placing the date and year of release of the Consultation Draft (December 2002) beside the name of the stakeholder who made the submission.

3 PRESENT SITUATION

OVERVIEW OF FUNCTIONS OF THE BOARDS

- 3.1 The consumer protection boards in the Consumer and Employment Protection portfolio have a range of functions, including licensing of participants in relevant industries, investigating complaints about the conduct of industry participants and, from January 2005, making allegations to the SAT when disciplinary action is required. The boards are also involved in a variety of activities including development of codes of conduct or professional standards expected of industry participants, conciliation of complaints and fixing of maximum levels of remuneration.
- 3.2 The current functions of the boards are described below in general terms. However, it should be noted that individual boards can and do vary in their practices and responsibilities. A brief summary of the principal functions of each board and their membership composition can be found at Appendix D. Other characteristics, including a list of legislation that the boards have some responsibility to administer, are also included in the summary.

Licensing

- 3.3 Licensing (or registration) is one of the primary functions of the boards that are the subject of this review. In most cases the boards are required to receive applications for licences and satisfy themselves that applicants meet a specified set of criteria as determined by the relevant Act.
- 3.4 Applicants for occupational licences generally are required to be of good character and to have a prescribed level of skill, qualification or industry-related experience. Most boards have the authority to set minimum qualifications or levels of expertise required of licensees. Some boards also have a responsibility to ensure that applicants for business licences have sufficient financial resources to fulfil their obligations under the relevant Act.
- 3.5 Applications for licences are received and processed by Registrars, Secretaries¹⁷ and DOCEP licensing officers supporting the various boards. Applicants are required to provide information in support of their applications, including references and evidence of academic qualifications. The processing of applications also may involve bankruptcy searches, police record checks and other probity checks by staff.
- 3.6 Recommendations regarding the granting of licences are generally made by DOCEP officers or board officers to the relevant board for endorsement. Applicants are not usually interviewed by boards unless there is doubt about an applicant having satisfied the requisite criteria. Boards also hear objections to the grant of a licence when mechanisms for making objections are set out in the enabling legislation.

¹⁷ The Registrar or Secretary is generally appointed as an officer of the board, in some instances by the board itself, in other cases, by the Department.

- 3.7 Some boards have the power to hold or set examinations and appoint examiners to determine whether applicants have the necessary skills and knowledge to be licensed¹⁸.
- 3.8 Some boards have explicit power to place conditions on the licences of individual industry participants. The powers to impose conditions on licences and the extent to which those powers are used vary amongst the boards.
- 3.9 It should be noted that the Gunning Committee was of the opinion that each of the boards it examined has generally been effective and efficient in the execution of its licensing functions, although further efficiencies could possibly be gained under alternative models of occupational licensing¹⁹.

Investigation

- 3.10 Each of the existing boards has a responsibility to investigate breaches of their enabling Act. Arrangements for providing investigative officers varies from board to board.
- 3.11 Investigations carried out on behalf of the Land Valuers Licensing Board are conducted by investigators employed by the Department. These officers are concurrently appointed as officers of the board under the *Land Valuers Licensing Act 1978 (WA)*.
- 3.12 Investigations and inspections carried out on behalf of the Motor Vehicle Industry Board and the Plumbers Licensing Board are conducted by compliance officers employed by the Department.
- 3.13 The Real Estate and Business Agents Supervisory Board and the Settlement Agents Supervisory Board also engage the services of investigators employed by the Department, but under a service delivery agreement with the Department on a fee for service basis. These DOCEP officers also hold concurrent appointments as officers of the boards.
- 3.14 Investigations for the Builders' Registration Board, the Painters' Registration Board and the Hairdressers Registration Board are conducted by investigators or inspectors employed independently by those boards.
- 3.15 The procedures and powers for conducting investigations and inquiries into the conduct of licensees and certificate holders vary amongst the boards. For example, the Real Estate and Business Agents Supervisory Board has substantial powers, including the power to compel the attendance of a person before the board, the power to compel the production of documents and the power to require a person to answer questions on oath. On the other hand, the Painters' Registration Board and Hairdressers Registration Board have very few such powers.

¹⁸ Land Valuers Licensing Board, Hairdressers Registration Board, Builders' Registration Board, and Painters' Registration Board.

¹⁹ Gunning Report, page 411.

- 3.16 The Gunning Committee did raise some concerns about the effectiveness and efficiency of the boards in relation to their supervisory role. In particular, the Committee was of the view that the length of time taken to investigate complaints was generally longer than desirable and that the boards were too far removed from the compliance process to take proper responsibility for its conduct²⁰.

Disciplinary Proceedings

- 3.17 Prior to establishment of the SAT disciplinary proceedings were conducted by the boards. As discussed previously, the SAT Amendment Act has transferred the jurisdiction to hear disciplinary matters from the boards to the SAT. However, during a transitional period the boards will continue to hear some disciplinary matters²¹.
- 3.18 The types of behaviour in relation to which boards and the SAT are given the jurisdiction to take disciplinary action against a licensee varies between the occupations. Typically, the disciplinary jurisdiction includes matters such as:
- improperly obtaining a licence (for example by fraud or deception);
 - breaching conditions of a licence;
 - failing to comply with the relevant Act, Regulations or code of conduct;
 - being found guilty of an offence under any other legislation that, in the opinion of the board, renders the licensee unfit to hold a licence; and
 - where any other cause exists that, in the opinion of the board, renders a person unfit to hold a licence.
- 3.19 For those matters when the boards retain jurisdiction to hear disciplinary matters, the boards are required to hold an inquiry to determine whether proper cause for disciplinary action exists. In the conduct of disciplinary proceedings, the boards are required to act according to equity, good conscience and the substantial merits of the case, without regard to technicalities and legal forms, and are not bound by rules of evidence.
- 3.20 Disciplinary proceedings are, however, usually conducted in an adversarial manner with the complainant or investigator presenting his or her case first. In many cases the complainant is an officer of the Department of Consumer and Employment Protection, often acting in his or her capacity as an officer of a board.
- 3.21 When a proper cause for disciplinary action exists, each of the boards had the power to suspend or cancel a licence or registration. Some boards also had the power to disqualify a person from obtaining a licence, to caution or reprimand a licensee or to impose a financial penalty. These powers have been transferred to the SAT, however, the boards will still be able to exercise these powers during any transitional period.

²⁰ Gunning Report, page 411.

²¹ See section 167 of the *State Administrative Tribunal Act 2004* for further details concerning transitional provisions

- 3.22 The position in respect of the imposition of financial penalties varies significantly amongst the various licensed occupations, ranging from a maximum of \$500 in the case of land valuers to \$25,000 in the case of the builders. The *Painters' Registration Act 1961* and *Hairdressers Registration Act 1946* do not make provision for the imposition of financial penalties.
- 3.23 It should be noted that a number of breaches of the Acts are matters that are also within the jurisdiction of the Court of Petty Sessions. There is provision in the Acts to allow for prosecutions in the Court for unlicensed dealings and serious breaches of the Acts (such as trust account breaches or conflict of interests).

Codes of Conduct

- 3.24 The Real Estate and Business Agents Supervisory Board, Settlement Agents Supervisory Board and Land Valuers Licensing Board are empowered to prescribe Codes of Conduct to regulate the activities of licensees and to inquire into their conduct where breaches occur.

Conciliation

- 3.25 In November 1998, amendments to the *Real Estate and Business Agents Act 1978 (WA)* resulted in the introduction of conciliation of consumer complaints as a statutory function of the board. At this time, the Real Estate and Business Agents Supervisory Board is the only board that has responsibility for conciliation of complaints defined in its enabling legislation.
- 3.26 Under the *Consumer Affairs Act 1971 (WA)* one of the functions of the Department of Consumer and Employment Protection is to receive complaints from consumers²². Conciliation processes are used to deal with many complaints to assist consumers in obtaining redress. As such, conciliation of complaints about participants in various regulated industries is carried out by the Department in conjunction with the various boards that are supported by the Department, but do not have specific statutory responsibility for conciliation of complaints.

Education

- 3.27 The Builders' Registration Board, Real Estate and Business Agents Supervisory Board and Settlement Agents Supervisory Board are the only boards that have a defined statutory role to play in respect of the provision of education services. Nevertheless, education services for other industries, such as the land valuation and motor vehicle sales industries are provided by the relevant boards with the assistance of the Department of Consumer and Employment Protection.
- 3.28 The education role encompasses matters such as the continuing education of industry participants, both in relation to new developments and compliance with obligations under the legislation, as well as education campaigns aimed at protecting consumer interests.

²² Consumers are defined so as not to include a person who carries on a trade or businesses, where goods, services, land etc are purchased in the course of that trade or business.

Management of Funds

- 3.29 Both the Real Estate and Business Agents Supervisory Board and Settlement Agents Supervisory Board are responsible for the administration of Fidelity Guarantee Funds, Education and General Purpose Funds and Board Interest Accounts.
- 3.30 Fidelity Guarantee Funds are funds established for the purpose of providing financial compensation to people who have lost money through the criminal or fraudulent activities of a licensed agent or an employee of a licensed agent during a real estate transaction or real estate settlement transaction. The boards assess and make decisions regarding claims by consumers on the Fidelity Guarantee Funds.
- 3.31 The Real Estate and Business Agents Supervisory Board is also responsible for the administration of the Home Buyers Assistance Fund (formed for the purpose of providing assistance to persons purchasing their first home).

Fixing of Maximum Fees

- 3.32 The Settlement Agents Supervisory Board and Land Valuers Licensing Board are empowered to prescribe the maximum remuneration or fees that a licensee may receive for services. Until late 1998 the Real Estate and Business Agents Supervisory Board also performed this function.

Policy Advice

- 3.33 The boards provide policy advice to the Minister for Consumer and Employment Protection and the Department of Consumer and Employment Protection. From time to time the boards initiate the provision of advice about policies and procedures in response to emerging issues in the marketplace. Similarly, the Minister and the Department will seek advice from the boards about matters of mutual interest. In this area, the boards act to facilitate consultation with industry.

INTERRELATIONSHIPS BETWEEN CURRENT FUNCTIONS OF THE BOARDS

- 3.34 The above information provides a brief description of the current responsibilities of the boards. However, it is important to recognise that these responsibilities represent an integrated set of functions.
- 3.35 The investigative and disciplinary processes inform licensing decisions. Boards will consider the number, nature and outcome of complaints when making a decision regarding an application for renewal of a licence or operating certificate. This integration goes beyond the boundaries of individual boards. For example, the records of boards regulating related industries regarding the outcome of disciplinary processes will be checked when an application for a licence or for renewal of a licence is received.

- 3.36 In addition, both the *Fair Trading Act 1987 (WA)* and the *Consumer Affairs Act 1971 (WA)* apply to industry participants concurrently with licensing obligations. The relationship between the Department and the various boards permits a coordinated approach in dealing with breaches of licence conditions and/or the legislation. For example, in some instances, complaints against licensees fall outside the boards' jurisdictions. In those cases, the Department may be in a position to take action under the *Fair Trading Act 1987*.
- 3.37 The Department and the boards are active in policy development in relation to each of the occupations.
- 3.38 The general nature of complaints and investigations provides material for education or information programs aimed at increasing the professional standards of an industry and decreasing the number of problems experienced by consumers. Similarly, the outcome of investigations and disciplinary processes provide issues for consideration when professional standards or prescribed codes of conduct are reviewed.
- 3.39 Integration of the various responsibilities of the boards ensures that decisions are not made in isolation, but rather allow programs to be developed to address common or systemic problems in an industry sector.

BUILDING DISPUTES TRIBUNAL

- 3.40 Although not a board, with regard to the functions described above, the Building Disputes Tribunal (formerly known as the Building Disputes Committee) has been included as part of this review. The Tribunal is fully funded by the Builders' Registration Board and falls within the ambit of those bodies to be considered as part of Machinery of Government reforms.
- 3.41 The Building Disputes Tribunal was established under the *Builders' Registration Act 1939 (WA)* to provide a quick, informal and inexpensive complaint resolution forum for hearing and settling contractual and workmanship disputes. Its role is to make orders to provide redress to consumers when appropriate.
- 3.42 When exercising its dispute resolution jurisdiction, the Tribunal is constituted by three persons, including the Chairperson or Deputy Chairperson, a person selected from a Consumer Panel and a person selected from a Builders Panel. The Consumer Panel is a panel of persons appointed by the Minister to represent the interests of consumers. The Builders Panel is a panel of persons representing builders' interests appointed by the Minister from a list of persons nominated by the Master Builders Association and the Housing Industry Association.
- 3.43 The Building Disputes Tribunal may make orders of up to \$100,000 in relation to contractual disputes and of an unlimited sum in workmanship disputes. In some circumstances, the functions of the Tribunal can be exercised by authorised officers of the Builders' Registration Board or the Registrar.

FUNDING AND STAFF RESOURCES OF CURRENT BOARDS

- 3.44 Six of the boards that are the subject of this review are self-funded. To some extent, each of these boards employs its own staff. Other boards are entirely dependent on the Department for funding and staff resources. The current funding and staff arrangements of the boards are described below in general terms. In addition, a summary of the funding arrangements and employment of staff by the boards is included with the material set out in Appendix D.

Self-funded Boards

- 3.45 The Builders' Registration Board and the Painters' Registration Board are both self-funded, largely from registration fees and levies. The Builders' Registration Board has also received funding from the Government in recent years by way of a grant. Both boards employ their own staff and have a joint funding arrangement with respect to administrative services. The Builders' Registration Board fully funds the Building Disputes Tribunal.
- 3.46 The Plumbers Licensing Board and Hairdressers Registration Board are self-funded, principally from funds derived from licence or registration fees, and employ their own staff. The Plumbers Licensing Board is supported by Departmental staff on a cost recovery basis.
- 3.47 The Real Estate and Business Agents Supervisory Board and the Settlement Agents Supervisory Board are also self-funded. Both of these boards receive income from licence and registration fees, and from interest on board trust accounts and investments. Under a joint funding arrangement these boards employ a director and a number of full time staff. In addition, both boards purchase services from the Department under a service delivery agreement. The Department employs a number of full time staff to provide those services.

Boards Funded by the Department

- 3.48 The Land Valuers Licensing Board and the Motor Vehicle Industry Board are fully funded by the Department.²³ Revenue generated by these boards from licence fees is not retained by the boards but goes into the State Consolidated Revenue Fund. The State Government then provides funding and staff to support the work of the boards within the budget of the Department. The financial reporting of these boards is integrated with the financial reports of the Department.

²³ The Motor Vehicle Industry Board is funded by the Department, though consideration is being given to funding the Board from retained revenue. The *Motor Vehicle Repairers Act 2003*, which was assented to in December 2003 but has not yet come into operation, will also provide for a Compensation Fund and an Education and Research Fund to be funded from motor vehicle repairers' licence and certificate fees.

APPOINTMENT OF BOARD MEMBERS

- 3.49 Members of the boards that are the subject of this review are appointed on a part-time basis. Generally board members hold the appointments concurrently with other employment or professional commitments. Some board members participate in the industries that are regulated by the boards of which they are members.
- 3.50 The level of remuneration for board members varies significantly. The amount of time spent by board members on board activities also varies.
- 3.51 Composition of the boards and remuneration levels for the Chairpersons and members of each of the boards under review is included in Appendix D.

THE DEPARTMENT OF CONSUMER AND EMPLOYMENT PROTECTION

- 3.52 The Department of Consumer and Employment Protection was formed on 1 July 2001 and brought together three Western Australian government agencies: the Ministry of Fair Trading, the Department of Productivity and Labour Relations and WorkSafe Western Australia. On 1 July 2002, the Technical and Safety Division of the Office of Energy was also incorporated into DOCEP as the Energy Safety Division.
- 3.53 The Department's purpose is to create an employment and trading environment that protects workers and consumers. DOCEP has four operational divisions: Consumer Protection, Energy Safety, Labour Relations and WorkSafe.

Consumer Protection

- 3.54 The Consumer Protection Division of DOCEP promotes consumer protection and fair trading in Western Australia by:
- providing information and advice to consumers and traders about their rights and responsibilities;
 - helping consumers resolve disputes with traders;
 - investigating complaints about unfair trading practices;
 - prosecuting unscrupulous traders;
 - regulating and licensing some business activities; and
 - developing legislation that protects consumers.
- 3.55 Consumer Protection administers 54 Acts on behalf of the Minister and State Government. The great number of statutes reflects the broad responsibilities of Consumer Protection.

- 3.56 Two of the Acts are central to the agency's operations. The *Consumer Affairs Act 1971* establishes the Department and the powers of the Commissioner for Fair Trading (who is also the Executive Director of the Consumer Protection Division of DOCEP). The *Fair Trading Act 1987*, which is Consumer Protection's other principal piece of fair trading legislation, has similarities to the Federal *Trade Practices Act 1974* in terms of its relevance to consumers and partnerships. The Commissioner and Department also derive duties and functions under other statutes within the DOCEP portfolio.
- 3.57 The majority of Consumer Protection's other Acts establish the foundations for administering specific industries or regulating special areas of the marketplace. The Acts establishing the boards and regulating the various industries considered by this review fall within this description.
- 3.58 Consumer Protection works in partnership with the boards to regulate specific industries or marketplace activities in Western Australia. While the boards are all separate statutory authorities responsible to the Minister for Consumer Protection, Consumer Protection provides support services for a number of the boards.

4 PROBLEMS WITH CURRENT STRUCTURE PREVIOUSLY IDENTIFIED

GUNNING COMMITTEE AND TEMBY ROYAL COMMISSION

4.1 As mentioned previously, this review takes into account the recommendations made by the Gunning Committee and the findings of the Temby Royal Commission. Both of these inquiries identified problems and issues in relation to the current structure of consumer protection boards. These issues are outlined below. Other issues, identified in the submissions to this review, are set out in Part 5 of this report.

4.2 The Gunning Committee has stated that its inquiry into the Fair Trading boards and committees (with the exception of the Finance Brokers Supervisory Board):

...has not revealed any serious or systemic problems in the respective industries which those entities regulate. There have not been any widespread problems that have resulted from a failure by the boards to effectively and efficiently exercise the statutory powers with which they have been vested²⁴.

4.3 However, the report does go on to state:

Although the Committee does not consider that there is any basis for general criticism of the boards in relation to the execution of their licensing functions, problems have been identified in relation to the performance of their broader compliance and industry supervision roles.²⁵

4.4 The Temby Royal Commission also identified issues in relation to the current board structure. Although the Temby Royal Commission examined only the Finance Brokers Supervisory Board and the Land Valuers Licensing Board, a number of the issues raised are applicable to other consumer protection boards and committees. A summary of those problems and issues identified by both the Gunning Committee and the Temby Royal Commission is outlined below.

Resourcing

4.5 Both the Gunning Report and the Temby Report identify resourcing as a problem faced, to varying degrees, by the boards. Those boards that do not have a separate budget and therefore rely on the Department for funding are affected by the resource limitations placed on the Department.

²⁴ Gunning Report, page ix

²⁵ Gunning Report, page x

- 4.6 Some self-funded boards also experience resourcing difficulties. For example, the Builders' Registration Board has experienced difficulties in the past due to a lack of funding. Despite recent amendments to the *Builders' Registration Act 1939 (WA)*, there is a view that the Builders' Registration Board may continue to experience difficulties in providing both a dispute resolution process and carrying out disciplinary functions²⁶.
- 4.7 Availability of resources has an obvious impact on the timeliness and quality of service provided. Inadequate funding can result in untimely delays in the dispute resolution process and compromises to the industry compliance, discipline and education roles of the boards²⁷.

Natural Justice Issues

- 4.8 The Gunning Committee found that the exercise of both a compliance and disciplinary function by the same board²⁸ raised concerns, on the part of the board, in relation to the principles of natural justice (in that the board acted as both prosecutor and judge). As a result, the boards had largely delegated responsibility for investigation of complaints to their staff or to service providers.
- 4.9 The Gunning Committee suggested that this delegation of responsibility led to a situation in which the boards were not party to information that they may otherwise find necessary or beneficial for the proper exercise of their supervisory role²⁹. In addition, this delegation of responsibility for investigations resulted in limited opportunity for the compliance process to benefit from the industry and consumer expertise that board members bring to the process³⁰.
- 4.10 The Temby Report also identified the problem of delegated responsibility in relation to its examination of the Land Valuers Licensing Board and the Finance Brokers Supervisory Board and noted:

*The Boards were given scanty information concerning complaints or the progress of investigations. They were not in a good position to improve outcomes as to the nature or speed of particular investigations, or indeed the process in general.*³¹

²⁶ Gunning Report, page 413.

²⁷ Gunning Report, page 413.

²⁸ It should be noted that the Motor Vehicle Industry Board does not exercise a compliance function and therefore does not experience the same natural justice concerns as other boards.

²⁹ Gunning Report, page 413.

³⁰ Gunning Report, page 414.

³¹ Temby Report, page 331 at para 22.39.

Part-time Nature of Board Members

- 4.11 The Gunning Committee found that the ability of board members to be actively involved in the compliance process was inhibited by the part-time nature of their appointments. Furthermore, because boards included members who ordinarily carried on other occupations, their professional commitments were an obstacle to the efficient disposition of board business.³² This problem was evident even in relation to those boards for which funding was not seen to be a problem³³.
- 4.12 The extent to which some of the responsibilities of the board were delegated to staff or service providers gave rise to concerns as to *how capable the boards are of effectively supervising the industries which they oversee*³⁴. This issue was not viewed as being significant in relation to the licensing function.

Delineation of Responsibility

- 4.13 Another issue identified by both the Gunning Committee and the Temby Royal Commission was confusion as to the delineation of roles, responsibilities and accountability in relation to the various functions of the boards, when DOCEP officers were also appointed as officers of the various boards³⁵.
- 4.14 The Gunning Committee expressed the view that:
- reliance on full time board staff, or the Ministry, or any other service provider, compromises the degree to which boards can actively exercise their statutory responsibilities*³⁶.
- 4.15 Therefore, in determining an appropriate model for occupational licensing:
- a model that enables ready identification of responsibilities within the regulatory system is desirable*³⁷.
- 4.16 The introduction of service delivery agreements in relation to some of the self-funded boards may have alleviated the problem of defining roles and responsibilities to some degree. However, it remains an issue, particularly in relation to DOCEP funded boards.
- 4.17 The Gunning Committee suggested that, even under a service delivery agreement, questions remain as to the capacity of the boards to effectively carry out their statutory responsibilities, particularly the supervisory or compliance functions. The questions arise from the fact that the day to day administration of the regulatory schemes for which the boards have statutory authority is not in their hands³⁸.

³² Gunning Report, page 414

³³ Gunning Report, page 117

³⁴ Gunning Report, page 414

³⁵ Gunning Report, page 415 – 416; Temby Report, page 321 at para 22.3

³⁶ Gunning Report, page 415

³⁷ Gunning Report, page 71

³⁸ Gunning Report, page 416

Perception of Bias

- 4.18 In addition, the Gunning Committee noted that board members who were involved in a particular industry were also involved in making decisions and influencing processes that potentially impacted upon competitors and colleagues. The Committee found evidence to suggest that both members of the public and industry participants perceived boards as biased due to industry domination and that this bias influenced selection of complaints for investigation, decisions about taking disciplinary action and the nature of disciplinary action taken³⁹.
- 4.19 The Temby Report notes that there is no provision for a consumer representative on the Land Valuers Licensing Board and states:

*There should be, as the principal purpose of this Act is to protect consumers.... As a general principle, it seems to me that not more than half of the members of any Board such as this should belong to the occupational group being controlled.*⁴⁰

Publicising of Breaches

- 4.20 The Temby Report suggests that serious breaches of legislation by licensed persons should always be publicised by the regulatory authority.⁴¹ It is in the public interest for clients or potential clients of a licensee to be aware of outcomes of disciplinary proceedings or actions.
- 4.21 Secrecy provisions in current legislation may inhibit boards publicising such information or sharing information with the Department and other regulatory bodies. Amendments to the relevant Acts currently proposed should rectify this problem.

Remuneration of Board Members

- 4.22 Both the Gunning Committee and the Temby Royal Commission raised the issue of levels of remuneration for board members.
- 4.23 Given the time commitments and responsibilities involved in performing their duties as board members, sitting fees in most instances may be considered inadequate. For example, Temby comments:

*As to the [Finance Brokers Supervisory Board], aspects of the Board's structure and remuneration of members rendered unrealistic any expectation that the Board would perform a hands on supervisory role*⁴².

³⁹ Gunning Report, page 417.

⁴⁰ Temby Report, page 322 at para 22.10.

⁴¹ Temby Report, page 362 at para 25.6.

⁴² Temby Report, page 329 para 22.34 .

4.24 The Gunning Committee recommended that:

... pending any change to the structure of the boards.....the remuneration of board members be reviewed to more adequately compensate them for time spent on board affairs⁴³.

⁴³ Gunning Report, page 69

5 GOVERNMENT REFORM INITIATIVE: STATE ADMINISTRATIVE TRIBUNAL

SAT REPORT

- 5.1 The *Taskforce Report on the Establishment of the State Administrative Tribunal*⁴⁴ (SAT Report) was released on 4 July 2002 by the Attorney General. The report recommends the establishment of a single tribunal to hear all administrative appeals. The tribunal would also assume the original decision making jurisdiction of a number of tribunals and the jurisdiction to hear disciplinary matters currently heard by a number of disciplinary or supervisory boards.
- 5.2 The SAT Report states:
- ...the current system largely relies on tribunals and boards with a part-time professional, occupational or commercial membership drawn from the fields they seek to regulate or oversee. The quality and consistency of decisions made by these various bodies depends upon the composition of the particular tribunals and boards from time to time. Additionally, each must be separately funded and equipped. Rarely is it the case that individual bodies are exposed to the 'best practice' of other bodies. In the main, the opportunity to share resources and expertise does not exist.*⁴⁵
- 5.3 Comments from submissions to this review about the SAT proposal were outlined in the Consultation Draft⁴⁶.

SAT LEGISLATION

- 5.4 The *State Administrative Tribunal Act 2004* (SAT Act) and the *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* (SAT Amendment Act) were passed in November 2004.
- 5.5 The SAT Act establishes the SAT and makes provision for matters such as appointment of members, proceedings before the SAT and requirements in relation to reviewable decisions.
- 5.6 The SAT Amendment Act amended a number of Acts to confer jurisdiction on the SAT to make original decisions previously made by various tribunals, disciplinary decisions in relation to occupational licensing and to review administrative decisions.
- 5.7 The SAT commenced operation in January 2005. The Department of Justice's Court Services Division is responsible for administering the new tribunal.⁴⁷

⁴⁴ The State Administrative Tribunal (SAT) is the new name for the proposed WACART.

⁴⁵ SAT Report pages 61-62 paragraph 13

⁴⁶ see Consultation Draft - Appendix F pages 91 - 93

⁴⁷ Refer to the SAT website for further information: www.sat.justice.wa.gov.au

IMPACT OF THE SAT ON THE DISCIPLINARY FUNCTIONS OF THE BOARDS

5.8 The SAT Amendment Act amends a number of DOCEP Acts to transfer to the SAT the jurisdiction to hear disciplinary matters previously heard by the following boards:

- Builders' Registration Board
- Hairdressers Registration Board
- Land Valuers Licensing Board
- Motor Vehicle Industry Board
- Painters' Registration Board
- Plumbers Licensing Board
- Real Estate and Business Agents Supervisory Board
- Settlement Agents Supervisory Board

5.9 Some transitional arrangements are in place to permit the boards to finalise disciplinary matters that were commenced prior to the creation of the SAT.

5.10 One of the shortcomings of the current structure that was identified in the previous chapter was the exercise of both the disciplinary and compliance functions by most of the boards in the consumer protection portfolio. The establishment of the SAT to exercise the disciplinary function in lieu of the boards is expected to address this natural justice concern.

5.11 The SAT Taskforce considers that the separation of regulatory functions from disciplinary functions is desirable in respect of all disciplinary boards. The Report states:

The work of the Gunning Inquiry and the Temby Royal Commission illustrates and emphasises the need for such a separation of functions⁴⁸.

5.12 The Report goes on to state:

Once the major disciplinary/supervisory function of these types of boards is separated from the regulatory/investigatory function, the boards will remain responsible for complaint handling and investigation, a most important task. It will be open to the Government to determine whether the boards, in particular the Consumer Affairs boards and committees, should retain a separate existence⁴⁹.

⁴⁸ SAT Report page 69 para 36

⁴⁹ SAT Report page 70 para 42

IMPACT OF THE SAT ON THE NON-DISCIPLINARY FUNCTIONS OF THE BOARDS

- 5.13 The jurisdiction to review licensing and other regulatory or administrative decisions of the boards will be transferred from the Courts to the SAT.
- 5.14 The statutory responsibility of the Real Estate and Business Agents Supervisory Board and the Settlement Agents Supervisory Board to make decisions concerning fidelity fund claims will not be transferred to the SAT. However, the SAT will have the jurisdiction to review those decisions.
- 5.15 The SAT Report recommended that the boards or other appropriate bodies retain the following types of powers (where relevant):
- licensing;
 - setting of regulations that govern the conduct of licensed persons;
 - the publication of guidelines to govern desirable conduct;
 - encouragement of good education and training practices;
 - complaint handling and investigation;
 - power to suspend licences in emergency situations; and
 - the exercise of conciliation powers in respect of complaints that result in no disciplinary action being required.
- 5.16 The SAT Report noted that it may be open to Government to consider amalgamation of boards or other options for performance of the residual functions of the boards⁵⁰.

IMPACT OF THE SAT ON THE BUILDING DISPUTES TRIBUNAL

- 5.17 The SAT Taskforce recommended that the original decision making jurisdiction of the Building Disputes Tribunal be transferred to the SAT. However, Cabinet resolved to further consider this recommendation and the functions of the Building Disputes Tribunal were not transferred to the SAT by the SAT legislation.
- 5.18 The SAT Report provides that the existing functions of the Building Disputes Tribunal involving mediation, conciliation and negotiation carried out by the Builders' Registration Board or Registrar before a matter is referred to the Building Disputes Tribunal should remain with the Builders' Registration Board or Registrar.

⁵⁰ SAT Report page 76 para 57

6 ANALYSIS OF OPTIONS FOR REFORM OF BOARDS

MODELS FOR REFORM AND THE SAT PROPOSAL

- 6.1 To address the implications of the Machinery of Government reforms, the SAT proposal, the Gunning Inquiry and the Temby Royal Commission, the Issues Paper presented four possible models for reform of boards and committees, namely:
- retention of Individual Boards;
 - creation of Merged Boards;
 - creation of a Business Licensing Authority; and
 - Departmental Regulation.
- 6.2 All of the above models incorporated the establishment of the SAT.
- 6.3 Stakeholder comments about the models presented and the establishment of the SAT were received and incorporated in the Consultation Draft. Comments in response to the Consultation Draft are also analysed in this report.

MODELS FOR REFORM NOT SUPPORTED BY STAKEHOLDERS

- 6.4 Two of the models presented in the Issues Paper, namely the Merged Boards and SAT model and the Business Licensing Authority model, received little support from stakeholders. These models are briefly presented below.

Merged Boards and SAT Model

- 6.5 Under this model, new boards would be created to regulate groups of related industries, namely:
- a Property Services Board;⁵¹
 - a Building Industry Board;⁵²
 - a Motor Vehicle Industry Board,⁵³ and
 - a General Services Board⁵⁴.

⁵¹ Comprised of the real estate, settlement and land valuation industries

⁵² Comprised of the building, painting, plumbing and electrical industries

⁵³ Comprised of the motor vehicle repair and motor vehicle dealer industries

⁵⁴ Included the hairdressing industry and possibly other general services.

- 6.6 Stakeholder comments indicated that very little support existed for implementation of the Merged Boards model⁵⁵. Merging of boards would dilute one of the key advantages of retaining boards, namely the knowledge and expertise of board members. In addition, any potential efficiency advantages of this model appear to be outweighed by the many practical challenges posed in implementation.
- 6.7 Accordingly, the merged board model was not considered to be an appropriate model for reform.

Business Licensing Authority

- 6.8 This model, recommended by the Gunning Committee, involved establishment of:
- a disciplinary tribunal;
 - a Building Licensing Authority; and
 - a limited number of Statutory Advisory Councils.
- 6.9 There was little support for the Business Licensing Authority model in the submissions received.⁵⁶ In addition, the model is contrary to the Machinery of Government principles and the purpose of this review. There did not appear to be sufficient benefits inherent in this model to outweigh the identified weaknesses. The model was therefore not considered to be a viable option.

REFORM OPTION: INDIVIDUAL BOARDS AND SAT MODEL

- 6.10 One of the primary concerns about the current functions of the boards relates to natural justice issues arising from the fact that boards perform both investigative and disciplinary functions. The establishment the SAT will result in a transfer of the disciplinary functions away from the boards to an independent tribunal, thus alleviating this problem. It should be noted that, with the current configuration of responsibilities, natural justice issues will be resolved only if all of the disciplinary functions of the boards are transferred to the SAT.

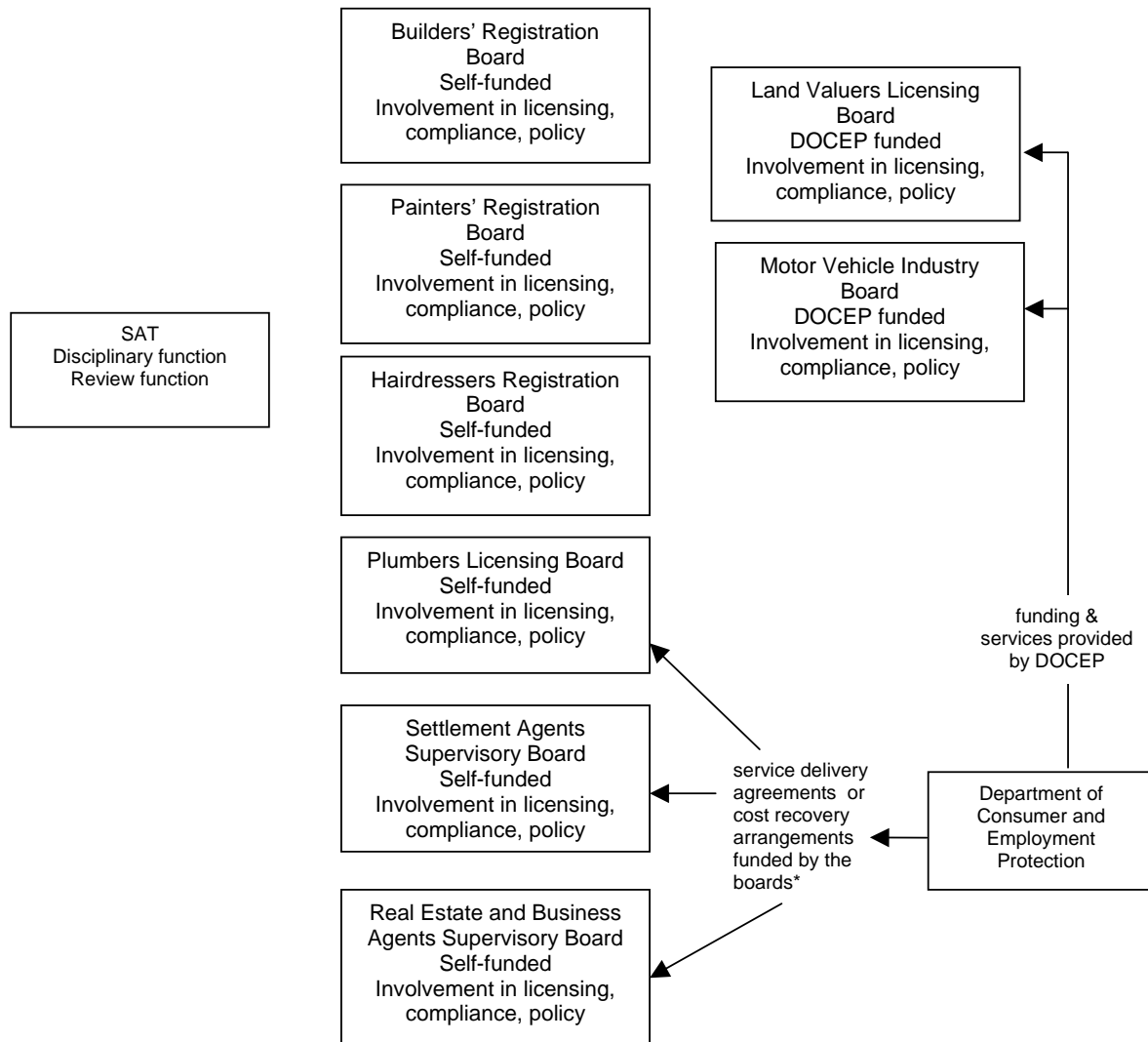
Structure

- 6.11 The review considered whether the boards could continue with substantially the same structure and perform all those duties currently performed by the boards, with the exception of disciplinary matters. Under such a model, the boards would retain responsibility for matters such as licensing, investigation, developing codes of conduct, conciliation, education, management of funds, fixing of maximum fees and providing some policy advice.
- 6.12 The following is a diagrammatic representation of a model in which the boards might continue to operate following implementation of the SAT proposal.

⁵⁵ For example, Land Valuers Licensing Board (December 2002) submission, page 3; Haskins (December 2002) submission, page 9; Electrical Contractors Association (December 2002) submission, page 5.

⁵⁶ For example, Haskins (December 2002) submission, page 9, Electrical Contractors Association (December 2002) submission, page 5.

Figure 1 : Individual Boards and SAT Model



* The Department of Consumer and Employment Protection provides services to three of the self-funded boards under service delivery agreements or cost recovery arrangements funded by the boards.

Analysis of the Individual Boards and SAT Model

- 6.13 An analysis of the strengths and weaknesses of a model whereby individual boards are retained to undertake the compliance, licensing and other board functions is set out below.

Accountability and Independence

- 6.14 One advantage that has been asserted by a number of commentators in relation to the creation and use of statutory authorities is the insulation of statutory authorities from traditional government departments. This insulation frees them from political influence and pressures, and permits the independent development of long-term policies.⁵⁷ It was submitted that politicians and government departments may be influenced by popular commentary whereas boards are free to make tough or unpopular decisions that produce overall community benefits.⁵⁸
- 6.15 It has also been argued that licensees have more confidence in the decisions of an independent industry body as opposed to one that is controlled by government. There appears to be some concern on the part of industry that government will not give the needs of industry participants due consideration.⁵⁹
- 6.16 However, freedom from political influence insulates a body from direct political accountability. Some commentators argue that it is questionable as to whether boards should be free from political influence, and the direct accountability arising from that influence, given the important community needs that they are created to serve and the public funds they spend.⁶⁰
- 6.17 It is also questionable whether boards themselves are in fact free from political influence. While government may not be able to direct the boards to act in a certain manner, government may have some indirect influence through other mechanisms such as appointment of board members and funding.⁶¹

⁵⁷ S.D. Hotop (1985) *Principles of Australian Administrative Law*, sixth edition Law Book Company, Sydney, p.61 and R Douglas and M Jones (1999) *Administrative Law Commentary and Materials*, Third edition, The Federation Press, Sydney, p.5. It should be noted that in identifying the types of activities that are appropriately carried out by statutory authorities, both texts cite examples such as activities of a commercial nature, a creative nature, education or research and activities where impartiality needs safeguarding, such as television or broadcasting.

⁵⁸ Settlement Agents Supervisory Board submission (Feb 2002), page 8; Real Estate and Business Agents Supervisory Board submission, page 16.

⁵⁹ Housing Industry Association (Feb 2002), submission, page 4.

⁶⁰ Douglas and Jones, page 5 and Hotop, page 61 (cites concern about poor performance and lack of accountability of statutory authorities).

⁶¹ Hotop, page 61.

- 6.18 Even though boards may be viewed as being free from direct political influence, they are still perceived as being subject to industry influence. Evidence indicates that there is a perception of bias when industry members are involved in making decisions affecting other industry members⁶², particularly if the board membership does not include adequate consumer representation. Boards may therefore be viewed as being 'captured' by industry.
- 6.19 The perception of bias would still be relevant in relation to the residual functions even though the boards would not continue to carry out disciplinary functions. If the boards continue to have responsibility for determining which complaints are to be investigated and making decisions on pursuing disciplinary action, the issue of bias would still be relevant⁶³.
- 6.20 Competition issues arise when industry is involved in determining who may enter the market and compete against other industry participants. It should be noted that a number of boards do attempt to counter this perception of bias by having board members step down in any instances in which a conflict of interest could be seen to arise⁶⁴.
- 6.21 From a consumer protection perspective, political influence and accountability could be viewed as preferable to industry influence given that public interest considerations are more likely to be taken into account.

Efficiency and Effectiveness

- 6.22 It has been argued that the freedom of boards from the constraints imposed by rigid public service rules helps promote technical and managerial efficiency⁶⁵. However, in the case of a number of Consumer Protection boards the appearance of freedom may be deceptive, particularly given the extent of support for boards provided by the public sector, which is subject to the *Public Sector Management Act 1994 (WA)* and rules. Furthermore, the public sector rules set out a system of checks and balances aimed at protecting the public interest.

⁶² Gunning Report, page 417. In addition, recent zero-based assessment reports in relation to Consumer Protection issues seem to establish that this perception exists.

⁶³ The Gunning Committee found evidence to suggest that boards were perceived as biased due to industry domination and that this bias influenced selection of complaints for investigation and decisions about taking disciplinary action. See Gunning Report, page 416.

⁶⁴ Motor Vehicle Industry Board submission, page 5.

⁶⁵ Hotop, page 61: quoted in Real Estate and Business Agents Supervisory Board and Settlement Agents Supervisory Board submissions. This argument is also cited in Douglas and Jones. Note that Hotop goes on to state that this point lacks substance "If technical and managerial efficiency cannot be achieved under public service rules, there is something wrong with those rules. But there is every reason to believe that managerial and technical efficiency is as high, or higher, in the government departments as it is in some statutory authorities." (page 61).

- 6.23 Boards have a specific focus and sense of responsibility for a particular industry. It has been submitted that this allows the board to focus all of its energies and resources on regulating that particular industry, therefore resulting in more effective regulation⁶⁶. It is suggested that a board will develop its own sense of institutional pride and sense of ownership or responsibility, which can result in a higher standard of efficiency.
- 6.24 Separation of the disciplinary functions of the boards from the residual functions will not only resolve natural justice issues, but will also reduce the workloads of the members and enable them to focus their attentions on the remaining functions⁶⁷. However, there is no real reason why a similar focus and drive could not be achieved by departmental regulation provided that the system is established appropriately and resourced adequately.
- 6.25 If separate boards are maintained, the ability of board members to be actively involved in the compliance process will continue to be inhibited by the part-time nature of appointment and competition from other commitments. However, it has also been argued that part-time appointment to a board is beneficial in that members are informed and aware of current industry practices⁶⁸. If board members were appointed on a full time basis, their perspective on issues may be limited as they would have less contact with industry outside the operation of the board⁶⁹.
- 6.26 If separate boards continue to operate, confusion will continue as to the roles and responsibilities of the boards and the Department. This confusion is most acute when DOCEP officers are also appointed as officers of boards.
- 6.27 There may be a danger of duplication of actions, for example by the boards and the Department (in relation to *Fair Trading Act 1987 (WA)* matters) or by two boards in relation to the same set of circumstances. There is also a danger of focussing only on the board as a source of action and ignoring the *Fair Trading Act 1987 (WA)* as a potential regulatory tool with higher penalties. Adequate communication mechanisms could alleviate these potential problems.
- 6.28 The maintenance of separate boards following the creation of the SAT may result in further complexity and duplication of costs as the SAT, the boards and the Department will all be involved to some degree in regulation of various industries. Responsibility for regulation will be further dispersed adding to confusion with regards to sources of assistance for consumers who have problems or complaints and identification of who is ultimately accountable for any action or inaction.

⁶⁶ David Dawes submission, page 2; Real Estate and Business Agents Supervisory Board submission, page 17; Settlement Agents Supervisory Board submission page 9.

⁶⁷ Settlement Agents Supervisory Board submission, page 5; Real Estate and Business Agents Supervisory Board, submission page 13.

⁶⁸ Joan Milne submission, page 2.

⁶⁹ Glenda Lewis submission, page 2.

- 6.29 The Gunning Report indicated that it is desirable to have some degree of uniformity of practice in the licensing areas (particularly in relation to appeals and to some extent in relation to original decision making). The current regime, with a variety of different practices, creates uncertainty that can lead to significant confusion and inefficiencies⁷⁰. Maintenance of separate boards following the implementation of the SAT may continue these inefficiencies.

Knowledge and Expertise

- 6.30 It has been submitted that industry boards develop specialised knowledge and focus in relation to the particular industries that they regulate⁷¹. The experience and expertise brought to boards by board members (particularly those with industry experience) is viewed by many stakeholders as essential or invaluable⁷². It has been argued that the benefits of this knowledge outweigh the disadvantages of any perceived bias⁷³.
- 6.31 In addition, board members with industry experience are viewed as better qualified to assess the suitability of applicants, industry standards and conduct of industry participants than persons without relevant industry experience⁷⁴. This issue was raised by a number of stakeholders in response to the Consultation Draft⁷⁵.
- 6.32 Conversely, if licensing criteria are appropriately identified in legislation, it may be that only limited industry experience is required to assess licence applications, with industry knowledge required only in relation to difficult or “borderline” applications.
- 6.33 Boards are also seen as being in a position to conduct more thorough investigations because they have a greater understanding of the issues.⁷⁶

⁷⁰ Gunning Report, page 401

⁷¹ Real Estate and Business Agents Supervisory Board submission, page 16, and Settlement Agents Supervisory Board submission, page 9.

⁷² Hairdressers Registration Board submission, page 1; Builders' Registration Board/Painters' Registration Board submission, page 2; Motor Vehicle Industry Board, page 5.

⁷³ Motor Vehicle Industry Board submission, page 5.

⁷⁴ Plumbers Licensing Board submission, page 1; Master Painters Association submission, page 1.

⁷⁵ Approximately 17 submissions to the Consultation Draft included comments about the benefits of utilising boards' industry expertise and experience in the regulatory process, particularly in relation to licensing, including Master Painters Association (December 2002) submission, page 6; Electrical Licensing Board (December 2002) submission, page 2; WRAPS Industry Training Council (December 2002) submission, pages 1-2.

⁷⁶ Plumbers Licensing Board submission, page 1.

- 6.34 It is suggested that the collective knowledge of members enables the boards to be in the best position to make appropriate decisions and respond immediately to changes in the industry and marketplace⁷⁷. However, the specialised knowledge of board members is generally focussed on industry matters rather than consumer protection issues, thus resulting in possible perceptions of capture and skewed deliberations in relation to the boards. In addition, board members may not necessarily be representative of an industry or consumers as a whole. This is particularly the case where industry representatives on boards are drawn from industry bodies that do not necessarily represent the views of the whole industry, but rather the views of the membership of their association.
- 6.35 The issue of bias has been raised in relation to the independence of boards in judging peers or competitors. The Gunning Committee found that some parties perceived the boards to be biased in favour of industry, while others perceived a bias against industry⁷⁸. Whether or not this bias does actually exist, the very perception of bias is damaging to the credibility of the process.
- 6.36 When a particular board does not carry out many investigations or inquiries, that board may not have the necessary skills and may not develop procedures to carry out the investigative functions. This situation is of particular significance in relation to industries such as land valuation⁷⁹ where few investigations are undertaken.

Funding Issues

- 6.37 Advantages of financial and budgetary control for self-funded boards have been identified in the submissions⁸⁰. Where boards are permitted more control over funds this has, in some instances, resulted in increased efficiency. The Gunning Committee found that both the Real Estate and Business Agents Supervisory Board and the Settlement Agents Supervisory Board had improved effectiveness after becoming self-funding⁸¹.
- 6.38 However, if self-funding is not adequate, boards may experience difficulties in performing all of their functions. For example, the Builders' Registration Board has experienced difficulties in the past due to funding constraints.
- 6.39 Not all boards are self-funded. A number rely on the Department for funding. These boards will be subject to any resource constraints imposed on the Department from time to time. Any disparity in funding between the boards can lead to inequities with regards to the level of regulation and the services provided in relation to different industries.

⁷⁷ Plumbers Licensing Board submission page, 3.

⁷⁸ Gunning Report, page 417.

⁷⁹ Gunning Report, page 145.

⁸⁰ Douglas and Jones, page 5, Real Estate and Business Agents Supervisory Board submission, page 17

⁸¹ Gunning Report, page 412

- 6.40 It has been submitted that both the financial and performance accountability requirements of the *Financial Administration and Audit Act 1985* (WA) should apply to all statutory boards or committees⁸². If separate boards are maintained and audits are required for each separate board, these may add to complexity and costs. Nevertheless, it is critical that appropriate procedures are followed.
- 6.41 Maintaining separate boards for the reduced functions following implementation of the SAT could allow those boards to direct cost savings (from removal of disciplinary function) into other functions of the boards. The extent of these cost savings will be dependent upon the amount of funding that is diverted to the SAT. However, at this stage there is no intention to transfer funding from self-funded boards to the SAT. If the functions of the boards are significantly reduced by the establishment of the SAT, it may be more appropriate to consider an alternative structure.

Composition of Boards

- 6.42 One of the benefits of maintaining boards is that board members represent various aspects of the industry. This breadth of representation allows for direct participation in the work of the board by appropriate parties such as industry participants, industry associations and consumers⁸³.
- 6.43 The effectiveness of boards can vary greatly depending on the ability of members to commit time and energy to its activities. Some board members may be unable to commit sufficient time to the process. When this occurs the consequences can be significant for both the industry and its consumers for an extended period, as members are generally appointed for a specified period with little capacity for intervention.
- 6.44 There are certain difficulties in finding appropriately qualified persons to appoint as board members, given the time commitments involved and the level of remuneration offered. For example, the daily sitting fee for members of some of boards is lower than the hourly charge-out rate for a legal practitioner despite the fact that a number of boards require some members to be legally qualified. As mentioned above, the Gunning Committee recommended that remuneration for board members should be reviewed⁸⁴.
- 6.45 In relation to the time commitments required of board members, the difficulties in attracting board members are compounded. A number of both industry members and consumer representatives are employed either full-time or part-time in the relevant industries in addition to performing their duties as board members.

⁸² Auditor General submission, page 1

⁸³ Douglas and Jones, page 5.

⁸⁴ Gunning Report, page 69; John Smith-Gander, submission page 1.

- 6.46 The selection process for board members can be time consuming and, at times, conflicts may arise in relation to appointments⁸⁵. The selection process has been criticised and it has been recommended that membership of boards should be on the basis of relevant expertise and experience, rather than representational status⁸⁶.
- 6.47 It has been submitted that often organisations purporting to represent industry do not have a close involvement with the whole of the industry, but represent only a small sector. Broader representation may be required, including consumer, government and employee nominees⁸⁷ to ensure that decisions are made in the broader public interest. If board members are appointed as representatives of an industry association, conflicts of interest may arise between their duties as board members and their obligations to their industry associations⁸⁸.
- 6.48 While industry members may be highly experienced in their field, training is often required for board members with regards to their roles and duties as board members. It has been suggested that current induction and training processes may not be adequate. If the boards are to continue, steps should be taken to ensure that proper training and induction is provided for members⁸⁹.

Machinery of Government Principles

- 6.49 The Machinery of Government Taskforce has recommended that the number of statutory authorities be reduced. The continued existence of separate boards to undertake licensing and investigation functions following the creation of the SAT may not be consistent with Machinery of Government principles.

⁸⁵ For example, where the Government is of the opinion that a person nominated by an industry association is not appropriate for appointment to a board.

⁸⁶ Auditor General submission, page 2; John Smith-Gander, page 1; Auditor General *Public Sector Boards- Boards Governing Statutory Authorities in Western Australia* (Report No 9 – November 1998), page 3.

⁸⁷ Building Trades Licensing Group submission, page 3.

⁸⁸ Auditor General *Public Sector Boards- Boards Governing Statutory Authorities in Western Australia* (Report No 9 – November 1998), page 11.

⁸⁹ Master Painters Association submission, page 4; Auditor General *Public Sector Boards- Boards Governing Statutory Authorities in Western Australia* (Report No 9 – November 1998), page 3.

Summary

- 6.50 The Gunning Committee was of the view that each of the boards had generally been efficient and effective in the performance of the licensing function, however, concerns were raised in relation to the effectiveness and efficiency in performance of the compliance of supervisory functions⁹⁰.
- 6.51 Creation of the SAT will address natural justice issues, however, Gunning identified fundamental weaknesses in the system which transfer of the disciplinary function to the SAT would not overcome⁹¹.
- 6.52 The following table summarises perceived strengths and weaknesses of continued regulation by the boards.

Advantages of Board Regulation	Disadvantages of Board Regulation
<ul style="list-style-type: none">▪ Board members bring industry knowledge and expertise that is viewed as invaluable to the regulatory process, particularly in assessing relevant licensing criteria, providing advice on industry standards, identifying emerging issues or problems in an industry and other policy issues.▪ Separate statutory authority, viewed as independent from political influence.▪ Industry may have more confidence in a body independent from government.▪ Part-time board members bring relevant, up-to-date industry experience.▪ Boards retain a specific industry focus. ▪ Appointment of an appropriate balance of board members according to objective selection criteria will deliver advantages noted above.	<ul style="list-style-type: none">▪ Perceptions of industry bias may continue through industry participants having decision-making power in relation to competitors. (Perceptions of bias could be addressed through more balanced board composition) ▪ Lower levels of political accountability. ▪ May be viewed as being subject to industry influence.▪ Part-time board members cannot be actively involved in the compliance process due to time constraints.▪ If separate boards are maintained, with separate administrative support, inconsistencies in licensing and other practices may not be addressed effectively.▪ The system of appointing board members is time consuming, conflicts of interest can arise and appointments by representational status may need to be reviewed.▪ Any confusion as to delineation of responsibility (between the boards and the Department) is likely to continue.▪ Does not address Machinery of Government Principles.

⁹⁰ Gunning Committee. (December 2000). *Report of the Gunning Committee of Inquiry into the Fair Trading Boards and Committee page 411.*

⁹¹ Gunning Committee. (December 2000). *Report of the Gunning Committee of Inquiry into the Fair Trading Boards and Committee page x-xi.*

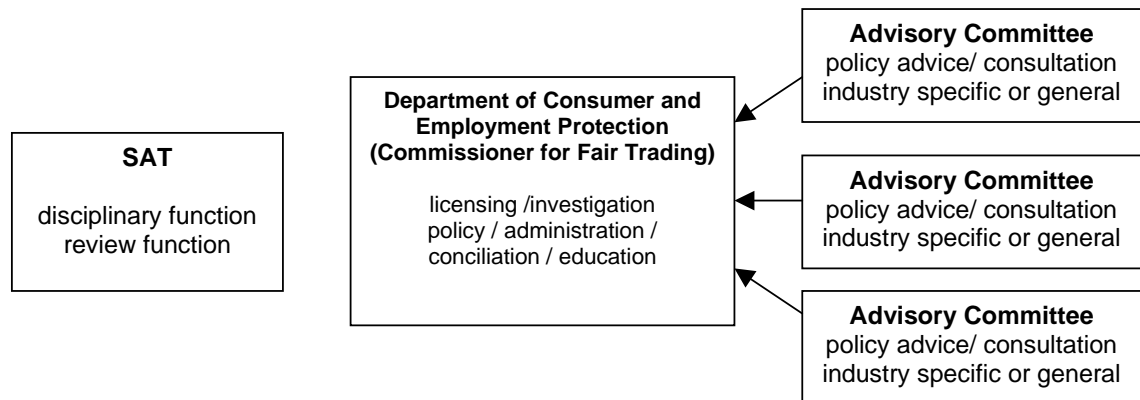
REFORM OPTION: DEPARTMENTAL REGULATION

- 6.53 The Machinery of Government Taskforce recommends that consideration should be given to incorporating functions of statutory authorities into government departments where appropriate.

Structure

- 6.54 Under the Departmental Regulation model responsibility for licensing, compliance, administration, developing codes of conduct, policy, education, and conciliation would rest with the Department and the Commissioner for Fair Trading. The SAT would hear all disciplinary matters, thus retaining the separation of the disciplinary functions and the compliance functions. Under such a model, advisory committees could be established to facilitate consultation with industry and consumers regarding matters such as development of policies and procedures.
- 6.55 The following is a diagrammatic representation of the departmental regulation model.

Figure 2: Departmental Regulation Model



Analysis of the Departmental Regulation Model

- 6.56 The following is an analysis of the strengths and weaknesses of the departmental regulation model, including issues that were highlighted in the submissions to the Issues Paper and the Consultation Draft of this review.

Accountability and Independence

- 6.57 Whereas boards may be viewed as being free from political influence⁹², but insulated from political accountability, the opposite would be the case if a government department undertakes regulation. A department may be subject to political influence, but at the same time would be politically accountable for its actions or inaction.
- 6.58 Political accountability, therefore, may come at the expense of independence from government. While industry tends to view independence from government as a good thing, some commentators question whether boards should be independent, given the important public function they perform⁹³.
- 6.59 It has been submitted that government regulation, supervision and control of industries needs to be carried out with full political accountability and transparency of process⁹⁴.
- 6.60 When a department is responsible for regulation it will be perceived as being independent of industry. The public sector is seen to act broadly in the “public interest” which overarches “consumer interest” and “industry interest” and takes into account the more general needs of the community. From a consumer protection perspective, political influence could be viewed as preferable to industry influence, given that public interest considerations will be taken into account.
- 6.61 Competition issues with regards to industry representatives restricting entry to the market, would not arise if the Department is responsible for licensing. A structure in which industry participants are acting in an advisory capacity, rather than actually making licensing or investigation decisions, may lessen or remove the perception of bias.
- 6.62 Departmental regulation may result in less support from industry because industry will have less participation in and ownership of the process⁹⁵ and knowledge of emerging issues. The reduced industry ownership may have some impact on the effectiveness of enforcement by the Department.
- 6.63 Regulation by a government department could also permit the implementation of social policies as part of a regulatory regime whereas industry dominated boards may have less motivation to implement broader social justice strategies.

⁹² Valdene Buckley (December 2002) submission, page 2; Master Painters Association (December 2002) submission, page 7.

⁹³ Hotop, page 61.

⁹⁴ Council on Ageing submission, page 1.

⁹⁵ For example, Australian Institute of Conveyancers submission, page 7. “The AIC does not support this proposal as there is no direct input from the profession.” This concern was also expressed by the Electrical Licensing Board (December 2002) submission, page 2.

Efficiency and Effectiveness

- 6.64 There is a perception in the community that the public service is not as efficient as independently managed entities due to the imposition of various public service rules⁹⁶. Further, it is suggested that the public service is prone to institutionalisation and resists change⁹⁷. This perception overlooks the fact that public service rules provide a system of checks and balances, although there may be less flexibility.
- 6.65 Consolidating regulation in the Department would permit a streamlining of procedures and allow a consistent approach to be taken in relation to regulation across all relevant industries. As such, consolidation of regulation in the Department could result in a greater degree of certainty for consumers and industry. Investigative procedures could be rationalised and expedited through direct reporting mechanisms within the Department itself, rather than the current system of reporting to the board⁹⁸. Artificial jurisdictional barriers applicable to separate boards would be removed.
- 6.66 Effectiveness is dependent, to a large extent, on the resources provided by government. It has been submitted that, because the Department administers a wide range of industries and markets, there will be competition for resources and a loss of focus in relation to specific industries⁹⁹. However, the Machinery of Government Taskforce has identified enhanced flexibility and responsiveness as an aim of the Machinery of Government reforms¹⁰⁰. These aims could be attained through the departmental regulation model.
- 6.67 Responsibility for decisions regarding the allocation of resources, and the impact of such decisions, would rest with the Department. There would be no need to delineate the roles and responsibilities of the Department and the boards. Criticism of the situation whereby formal responsibility has rested with the boards and inherent responsibility rested with the Department, leading to confusion and reluctance to take clear carriage of investigations, would be overcome.
- 6.68 The Gunning Committee was of the opinion that:
- 6.69 *“a system which provides for the body with ultimate responsibility for the regulatory functions to be solely in control of those who perform those functions is a preferable model of regulation”¹⁰¹.*
- 6.70 Transfer of the non-disciplinary functions of the boards to the Department would result in greater clarity with regards to responsibility for those functions, such as granting of licences or investigating complaints.

⁹⁶ Real Estate and Business Agents Supervisory Board submission, page 16; Settlement Agents Supervisory Board submission, page 8 ; Hotop page 61.

⁹⁷ David Dawes submission, page 3.

⁹⁸ Real Estate Institute of Western Australia submission, page 9.

⁹⁹ Real Estate and Business Agents Supervisory Board submission, page 17; Settlement Agents Supervisory Board submission, page 9.

¹⁰⁰ Machinery of Government Taskforce Report, page 18.

¹⁰¹ Gunning Report, page 96.

- 6.71 Under the departmental regulation model, departmental officers would be able to devote their full attention to the regulation of a particular industry or industries as employees of the Department. There would be no conflict with their duties as board appointees.
- 6.72 If departmental regulation is implemented, investigators may be encouraged to take a broader approach, for example, by considering whether conduct of industry members breaches the *Fair Trading Act 1987* (WA) as well as industry specific legislation. This should decrease the risk of duplication of investigations and would permit a cross fertilisation of ideas and developments.
- 6.73 Boards are often viewed as effective regulators because industry participants are reluctant to be judged or investigated by their peers (as opposed to a government body). This advantage would be lost if the Department performs the entire regulatory function¹⁰².
- 6.74 It has been suggested that in other jurisdictions that there has been diminution of regulation in industry when functions were transferred to department of state¹⁰³.
- 6.75 The corporate identity of the boards would be lost by the adoption of the departmental regulation model¹⁰⁴. Nevertheless, the Department has developed an identity as the place to contact when consumer problems arise and this identity could be strengthened. In addition, ease of access to the Department is an advantage for both consumers and industry participants. There is also an advantage in having a single identity to promote instead of several separate identities.
- 6.76 The Gunning Committee noted that under the current system most of the functions of the Real Estate and Business Agents Supervisory Board and the Settlement Agents Supervisory Board (with the exception of discipline) could be effectively performed by administrative staff or service providers. Efficient and effective systems have been put in place to manage the relevant processes, so that the boards' role is effectively one of review¹⁰⁵. Provided that proper mechanisms are implemented, all of the non-disciplinary functions of the boards could be performed administratively by the Department with advisory councils carrying out the role of review.

¹⁰² Valdene Buckley (December 2002) submission, page 3.

¹⁰³ Real Estate and Business Agents Supervisory Board submission, pages 33-35. Includes comments from real estate regulators in the USA; This is the view of the international, but predominantly American, Association of Real Estate Licence Law Officials.

¹⁰⁴ It is questionable as to how strong this corporate identity actually is. The Gunning Inquiry found that with some of the boards there was confusion on the part of the public as to whether the boards were in fact separate from the department, particularly in relation to boards that are co-located with the department.

¹⁰⁵ Gunning Report, page 206.

Knowledge and Experience

- 6.77 Given that there is no direct industry input in the decision making process, the departmental regulation model lacks the benefits of specific industry expertise brought to boards by members¹⁰⁶.
- 6.78 Industry Advisory Councils may be able to provide some element of expertise, but would not be involved to the same degree as boards. Adequate training and recruiting could be used to ensure that the necessary experience and knowledge is available within the Department.
- 6.79 Some commentators argue that to be effective boards should remain as controlling bodies and not advisory bodies¹⁰⁷. In addition, it has been submitted advisory bodies may be viewed as operating in a vacuum. They would not be directly involved in regulation¹⁰⁸ and may be viewed as somewhat superfluous to the process¹⁰⁹.
- 6.80 It has been submitted that investigations are best performed by parties with industry knowledge. The Department could only be effective in performing this function if adequately qualified investigators are employed¹¹⁰. Concerns have been expressed that a department with a consumer protection focus may overlook factors currently considered to be important by some of the boards, such as public safety in the context of plumbing issues¹¹¹.
- 6.81 The departmental regulation model would allow information to flow within the Department about related industries or matters, permitting an holistic approach to be taken. Reports on the outcomes of disciplinary matters will need to be obtained by the Department, from the SAT, in order to ensure that relevant factors can be taken into account in assessing licence applications.
- 6.82 A department may be perceived as being more independent in judging industry participants. However, under the departmental regulation model, the Department would be able to seek advice from the industry advisory body, thereby ensuring adequate input of industry knowledge.

¹⁰⁶ Joan Milne submission, page 3: "The Department does not have the industry-based knowledge to set licensing standards or assess compliance within an industry....Consumers rely on licensing to maintain standards in an industry and it is essential that licensing criteria are industry appropriate and relevant in the current market".

Settlement Agents Supervisory Board submission, page 21 "Board members bring a variety of experience, including practical industry experience, that is particularly insightful when making judgements as to the suitability of applicants."

As noted elsewhere, approximately 17 submissions to the Consultation Draft expressed concern about the loss of knowledge and expertise if the initial model is implemented, including Australian Institute of Conveyancers (December 2002) submission, page 6; Valdene Buckley (December 2002) submission, page 2 and Builders' Registration Board/Painters Registration Board (December 2002) submission, pages 4-5.

¹⁰⁷ Building Trades Licensing Group submission, page 4.

¹⁰⁸ Motor Vehicle Industry Board submission, page 7

¹⁰⁹ Motor Vehicle Industry Board submission, page 8

¹¹⁰ Plumbers Licensing Board submission, page 1 (of attachment)

¹¹¹ Plumbers Licensing Board submission, page 2

Funding Issues

- 6.83 The departmental regulation model may result in cost savings to Government, and ultimately consumers, by eliminating duplication and reducing administration staff for board specific functions. However, licensing and other functions will need to continue. There would be some obvious cost savings as certain board specific costs would no longer need to be met, such as board members sitting fees. However, it is unlikely that the savings would be significant. There would also be some costs involved in setting up the system of regulation.
- 6.84 It has been submitted that departments of State have limited resources and must prioritise according to areas of concern¹¹². Priorities are influenced by Government policy and political factors may influence the allocation of resources. Boards themselves are also subject, in varying degrees, to the same type of budgetary pressures.
- 6.85 Boards can be effective lobbyists for resources. This advantage will be lost if the departmental regulation model is adopted.
- 6.86 Consideration will need to be given to the allocation of funds if the departmental regulation model is implemented. For example, when funds are received in the form of licence fees, or from other sources specific to particular industries, decisions are required as to whether the funds be earmarked for that industry or form part of consolidated revenue. Industry participants are unlikely to view favourably the notion of subsidising the regulation of other industries.¹¹³ There are inconsistencies in the current funding arrangements in that some boards are completely self-funded, some are completely funded by government and others receive funding from both sources.¹¹⁴

Composition of Boards

- 6.87 No board appointments would be required under this model. However, Advisory Councils would need to be appointed. Given the lower level of responsibility and demands on time it may be easier to find people willing to serve on the councils. At the same time it may be more difficult to attract high calibre members of various professions because advisory councils may be viewed as less prestigious than boards.¹¹⁵
- 6.88 Sitting fees for advisory council members would be required however, given the narrower responsibilities involved, these are likely to be somewhat lower than board member sitting fees. Nevertheless, any savings are likely to be limited.

¹¹² Settlement Agents Supervisory Board submission, page 9; Real Estate and Business Agents Supervisory Board submission page 17.

¹¹³ Master Painters Association submission, page 3.

¹¹⁴ Master painters Association (December 2002) submission, page 3; Valdene Buckley (December 2002) submission, pages 1-2.

¹¹⁵ This view is supported by the Motor Trades Association (December 2002) submission, page 8; Motor Vehicle Industry Board (December 2002) submission, page 5; Electrical Licensing Board (December 2002) submission, page 2.

Machinery of Government Principles

- 6.89 The departmental regulation model is consistent with the Machinery of Government principle that, where possible and appropriate, functions of statutory authorities should be incorporated into departments of State.

Summary

- 6.90 The following table summarises the perceived strengths and weaknesses of regulation by the Department.

Advantages of Departmental Regulation	Disadvantages of Departmental Regulation
<ul style="list-style-type: none">▪ The Department may be viewed as being free from industry influence▪ The Departmental regulation model has the advantage of greater political accountability.▪ The Department has an established identity as a regulatory body and is easily accessible to the public.▪ Department will be in a position to use knowledge and experience gained in one industry across other sectors.▪ The implementation of public sector rules provides a system of checks and balances.▪ Consolidation of functions in the Department would permit a consistent approach to be taken across all industries, providing some certainty for industry and consumers and allowing for efficiencies of scale.▪ The model provides greater clarity with regards to delineation of responsibility for officers of the Department, industry and community.▪ The model accords with Machinery of Government principles in that those functions of the boards that can be performed by the Department are transferred to the Department.	<ul style="list-style-type: none">▪ The Department may be viewed as being subject to political influence▪ The Department does not necessarily have the experience and expertise brought to the boards by industry participants.▪ There may be less support from industry participants, as industry will have less participation in and ownership of the process.▪ The Department does not have the specific focus on individual industries to the same degree as the Boards.▪ Public sector rules may result in less flexibility.▪ There may be some loss of knowledge and expertise if high quality members are not attracted to a board that does not have a direct regulatory function.

INITIAL MODEL - OUTLINED IN CONSULTATION DRAFT

- 6.91 After considering the relative strengths and weaknesses of the possible models, the Consultation Draft outlined a model based predominantly on the departmental regulation model, but with the retention of separate boards for strategic policy advice (the initial model). However, as previously explained, it was evident upon release of the Consultation Draft that many stakeholders supported the retention of some decision-making functions by the boards.
- 6.92 Stakeholders expressed concern that benefits of the knowledge and experience of the board in relation to industry specific issues would be lost if the boards were no longer involved in decision making, particularly in relation to matters such as licensing.
- 6.93 Some stakeholders also questioned whether the boards would be in a position to give strategic policy advice if the boards were completely separated from the compliance and disciplinary functions.
- 6.94 Consequently, a hybrid of the individual boards model and the departmental regulation model was developed and is outlined in detail in Part 7 of this report as the final model for the Review of Boards and Committees in the Consumer and Employment Protection portfolio.
- 6.95 The final model for the future role and functions of the boards differs from the initial model primarily in three areas:
- retention by the boards of the decision-making function in relation to licensing and registration;
 - provision for the boards to approve the referral of disciplinary cases to the SAT; and
 - determination by the boards of payments from fidelity guarantee funds.

7 FINAL MODEL FOR BOARDS

CONSIDERATIONS FOR FINAL MODEL

7.1 As outlined in Part 5, the SAT has assumed all of the disciplinary functions of the boards. In developing a final model, the review considered how the remaining regulatory functions of the boards should be performed. Such considerations include the broad aims of reforms, such as the Machinery of Government principles, and an examination of the relative strengths of the boards and the Department.

Aims of Reforms

7.2 The Machinery of Government Taskforce identified the following general objectives of reform¹¹⁶:

- enhanced effectiveness;
- enhanced flexibility and responsiveness;
- improved capacity for prioritisation;
- improved accountability; and
- improved transparency of process.

7.3 These objectives were identified in the context of reform of the public sector. They were to be applied to any reform of the Consumer Protection boards and committees undertaken as a part of the broader Machinery of Government reform program.

7.4 More specifically, in developing a proposal for the future role and functions of Consumer Protection boards, the following issues needed to be taken into account:

- the need for industry experience, knowledge and expertise in the regulatory process;
- the importance of selecting well qualified board members and providing appropriate induction;
- any perception of bias in relation to the boards with a predominance of industry members;
- the importance of accountability to the public;
- natural justice issues (i.e. until the commencement of the SAT, the same bodies carried out both compliance and disciplinary functions in regulating various industries, thereby acting as both prosecutor and judge);
- the need for a clear delineation of responsibilities between the boards and the department that supports their activities;
- the difficulty for part-time boards to supervise and regulate an industry;

¹¹⁶ Machinery of Government Taskforce Report, page 18

- the potential for conflicts of interest to arise (for board members and officers); and
 - the need to ensure streamlined processes and ensure consistent approaches.
- 7.5 The relative strengths of the boards and the Department were considered in determining how the aims outlined above could be met.

Strengths of the Boards

- 7.6 A significant strength of the boards is their specialised industry knowledge and the expertise possessed by members in relation to industry specific issues. The expertise and experience brought to boards by members (particularly those with industry experience) is viewed as invaluable by many stakeholders. In addition, boards with adequate consumer representation provide an opportunity for direct consumer input into regulatory programs. This direct input from consumer representatives on boards is also critical.
- 7.7 Boards are perceived as being free from direct political influence. However, boards may be perceived as being subject to industry influence and will be insulated from political accountability.
- 7.8 The part-time nature of board members brings with it both advantages and disadvantages. Board members who are actively employed in their industries will be aware of emerging issues, problems and current practices in those industries. At the same time, board members who are also engaged in full time or part time employment in addition to performing their duties as board members may have difficulties in meeting the necessary time commitments required to deal with board matters.
- 7.9 The boards therefore can be viewed as being a more appropriate body to deal with matters requiring specific expertise and industry knowledge because the Department does not possess the same degree of specialised knowledge.

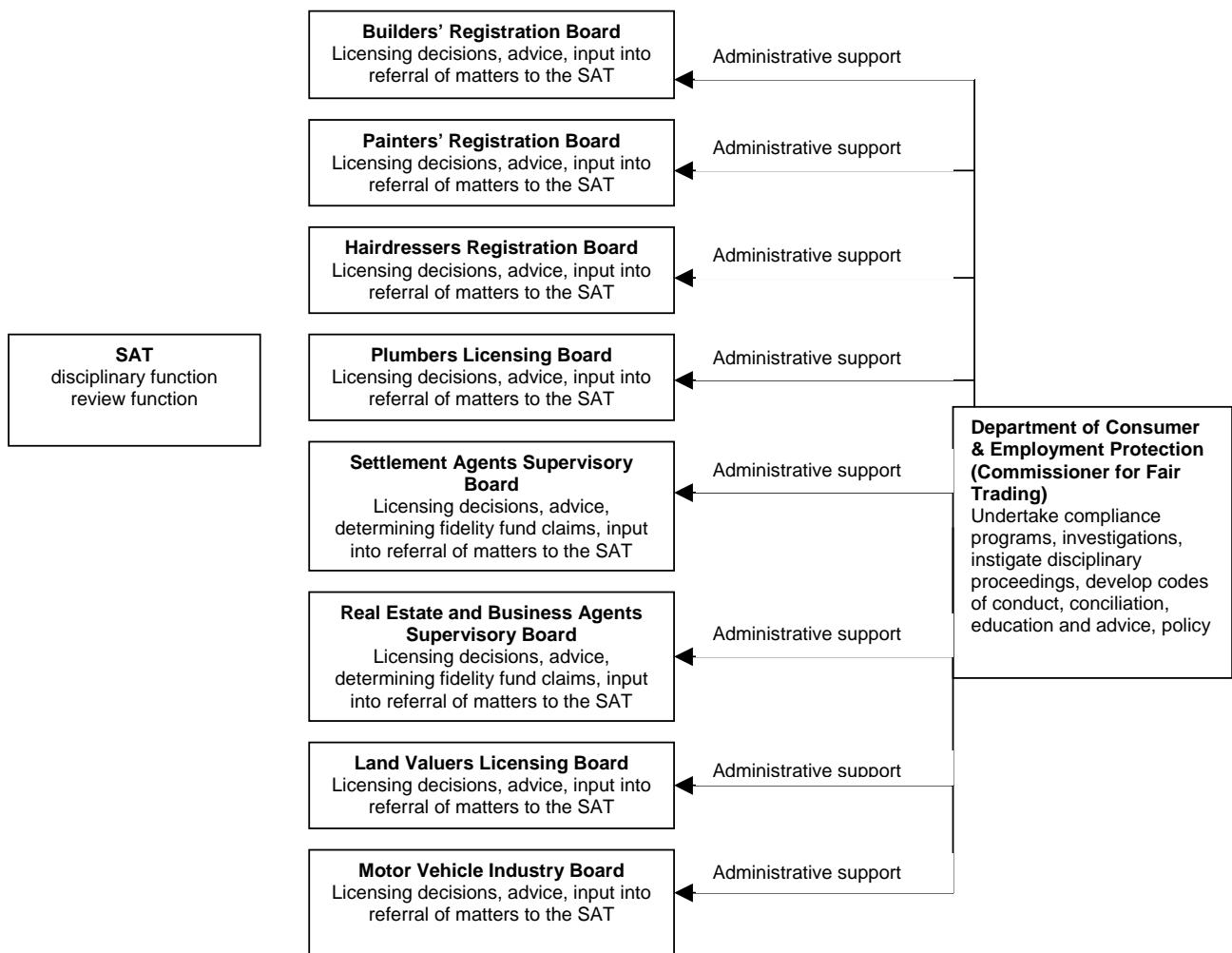
Strengths of the Department

- 7.10 The Department may be subject to some political influence, but it will also be fully politically accountable for its actions.
- 7.11 When a department is responsible for government regulation it will be perceived as being independent from industry and should take public interest matters into account. However, independence from industry comes at the costs of knowledge and expertise brought to the boards by industry participants. Implementation of public sector rules provides a system of checks and balances. Consolidation of functions in the Department would permit a consistent approach to be taken across all industries, providing some certainty for industry and consumers and allowing for efficiencies of scale. In addition, the Department has an established identity as a regulatory body and is easily accessible to the public. The Department can be viewed as the more appropriate body to perform those functions requiring a decision maker who is independent from industry, has a transparent decision making process and is administratively accountable for its actions.

FINAL MODEL

- 7.14 It is recommended that a model be adopted whereby the boards would retain a decision-making role in relation to licensing and registration, and in the administrative determination of fidelity fund claims. In addition, the Department would seek the boards' endorsement before disciplinary matters are referred to the SAT.
- 7.15 The boards would also perform a significant advisory function, thus ensuring that adequate industry knowledge and expertise is retained in the regulatory process. It is anticipated that the boards would provide advice and recommendations on a broad range of issues, including policy development and educational initiatives.
- 7.16 The Commissioner for Fair Trading and DOCEP will assume responsibility for compliance programs and investigations, making allegations to the SAT that disciplinary action is warranted, development of codes of conduct, conciliation, education and advice programs.
- 7.17 Below is a diagrammatic representation of the final model.

Figure 3: Final Model



DELINEATION OF FUNCTIONS BETWEEN THE BOARDS AND THE DEPARTMENT

- 7.18 The proposed delineation of responsibility for the current functions of the boards is set out below.

Licensing

- 7.19 The boards will continue as licensing authorities for the various regulated industries and will be supported administratively by DOCEP.
- 7.20 Under the final model, the boards will also continue to provide advice about relevant licensing criteria and will approve training courses for industry participants (where relevant).
- 7.21 DOCEP will undertake the initial processing of applications, with these procedures being overseen by a registrar or secretary employed by DOCEP. However, the board will have responsibility for the final decisions with regards to the granting or renewal of licences.
- 7.22 Consistent with requirements set out in the SAT Act, reasons for a decision should be given when application for a licence has been refused or if conditions are imposed on a licence by the boards.
- 7.23 The SAT would be responsible for reviewing licensing decisions of the Boards.

Policy Advice

- 7.24 It is anticipated that the boards will make recommendations to the Minister and Department on a wide range of issues relating to legislation and relevant regulatory matters. The boards will also report to the Minister on any matters of policy referred by the Minister for their consideration. The Department will continue to provide policy advice to the Minister, as part of its role as an agency of the State Government.

Codes of Conduct and Fee Schedules

- 7.25 The boards will make recommendations to the Minister with regards to the provisions of the codes of conduct and any standards or specifications for industry conduct included in those codes.
- 7.26 If codes of conduct may be prescribed¹¹⁷, those codes of conduct will be prescribed in regulations following consultation by the Minister with the boards. It is anticipated that the Department would play a significant role on behalf of the Minister in consulting with the boards and developing the codes.
- 7.27 The Department will develop schedules for maximum fees (where required¹¹⁸) on advice from the boards.

¹¹⁷ Currently codes may be prescribed by the Real Estate and Business Agents Supervisory Board, the Land Valuers Licensing Board and the Settlement Agents Supervisory Board.

¹¹⁸ Currently the Settlement Agents Supervisory Board and Land Valuers Licensing Board set maximum fees.

Investigation

- 7.28 The boards will provide advice to the Minister and Director General with regards to appropriate compliance programs and policies for regulating relevant industry participants.
- 7.29 Under the recommended model the Commissioner, supported by the Department, will assume responsibility for investigation of complaints and allegations of misconduct by industry participants. The Department will also engage in proactive compliance programs where appropriate. The Department will require adequately qualified and experienced compliance officers in order to take a proactive approach to undertaking its compliance and investigations role.
- 7.30 The Department will provide reports on compliance programs to the boards.

Disciplinary Proceedings

- 7.31 The SAT will be responsible for hearing of almost all disciplinary matters in relation to the various occupations.
- 7.32 The boards will endorse recommendations regarding matters to be presented to the SAT and review results of disciplinary proceedings before the SAT. It is anticipated that, by having this continuing involvement in the disciplinary process, the boards will be in a position to provide advice to the Commissioner and the Department and the Minister regarding evidence of any systemic problems in the particular industry.
- 7.33 The Commissioner, supported by the Department, will prepare and present disciplinary matters to the SAT and report to the boards on the outcome of all disciplinary proceedings.
- 7.34 Should there be disagreement between a board and the Commissioner about referral of a matter to the SAT, mechanisms will be put in place to permit the Commissioner to continue with an action, however, the Commissioner would be required to notify the Minister of this decision.

Conciliation

- 7.35 It is proposed that the Department perform the role of conciliation in relation to complaints in all areas, including complaints made against real estate and business agents currently the responsibility of the Real Estate and Business Agents Supervisory Board.
- 7.36 The boards could perform an advisory role in assisting the Department to identify and address systemic problems in the marketplace.

Education

- 7.37 Currently, only the Real Estate and Business Agents Supervisory Board, the Settlement Agents Supervisory Board and the Builders' Registration Board have a defined statutory responsibility in relation to the provision of education. Under the recommended model, the Commissioner and Department will develop and deliver all community education programs to industry and consumers. The boards will provide advice and input to the Minister and the Department in relation to any education or information programs for consumers or customers and industry participants.

Management of Funds

- 7.38 Under the final model, the allocation of funds, which do not form part of the consolidated fund, will be allocated and managed in accordance with resource agreements. The Department and the board will be required to develop the terms of such resource agreements for approval by the Minister. Allocation of funding will not be changed without agreement of the board.
- 7.39 Funds currently held by the boards, such as fidelity guarantee funds, general purpose and education funds and the Home Buyers Assistance Fund, will be transferred to the Department of Treasury and Finance for administration in accordance with the resource agreements.
- 7.40 The Department will use industry specific funds in delivering programs for the relevant industry in line with the terms of the resource agreement and will provide regular reports to the boards to demonstrate the allocation of resources in accordance with the resource agreement.
- 7.41 Fidelity Guarantee Fund decisions will be made administratively by the relevant board.
- 7.42 Appeals against the fidelity fund decisions will be heard by the SAT as part of its jurisdiction to review administrative decisions. Appropriate processes will need to be developed in order to coordinate disciplinary hearings before the SAT and fidelity fund claims in relation to the same conduct by a licensee.

Other Functions

- 7.43 The Real Estate and Business Agents Supervisory Board, the Settlement Agents Supervisory Board and the Motor Vehicle Industry Board currently have a statutory duty to oversee agents' or dealers' trust accounts and the audit of those accounts. These functions would be transferred to the Department, with the board providing advice and making recommendations in relation to any systemic trust account problems that are identified.
- 7.44 The Department will perform an information management function and assume responsibility for recording and maintaining systems containing registers of licensees, records of SAT disciplinary decisions, details of board decisions, policy documents and relevant information. The Department will also be responsible for making the information available to the boards, the SAT and where appropriate, the public.

OTHER RECOMMENDATIONS CONCERNING THE BOARDS

- 7.45 The Consumer Protection boards will be maintained as separate boards, to make licensing decisions and to provide advice to the Minister and the Director General on a variety of policy and operational matters.
- 7.46 The name of each board would need to be reconsidered to ensure it accurately reflects its roles and functions.

Administration

- 7.47 It is envisaged that the boards will be supported administratively by the Department, thus achieving some efficiencies in relation to administrative costs and functions and allowing for consistency to be developed.

Membership and Operation

- 7.48 In order to address any perception of bias it is recommended that there be balanced board membership, including representatives of industry, consumers and the public interest generally. Board members should be appointed on the basis of knowledge and experience, not representational status. Selection criteria should allow for a balance of skills and knowledge and adequate input from stakeholder groups. The Minister will call for nominations from relevant industry bodies and stakeholder groups and ensure suitable appointments are made.
- 7.49 Under the final model the time required of board members will be reduced. This will make it easier for board members to meet board commitments.
- 7.50 Remuneration for board members should be reviewed and, if possible, standardised. Remuneration should take into account all of the time required to be spent by members on board matters, including preparation for meetings, as well as time spent by board members in providing advice to the Minister and the Commissioner. Public servants who sit on boards on a part-time or “sessional” basis in addition to performing their primary duties, should also be adequately compensated for their board work.
- 7.51 The recommendations of the Auditor General in relation to public sector boards¹¹⁹ should be applied where relevant. In particular:
- memoranda of understanding or charters should be developed that define the roles and relationships of the board, the department and the Minister;
 - board members should be appointed based on qualifications, rather than representational status, pursuant to an open and transparent process using relevant selection criteria; and
 - board members should be provided with adequate training and induction in relation to their duties as board members.

¹¹⁹ Auditor General *Public Sector Boards- Boards Governing Statutory Authorities in Western Australia* (Report No 9 – November 1998), pages 12 and 13

- 7.52 Clear, consistent codes of conduct or governance standards for board members should be developed and implemented if they do not already exist, and board members should be provided with these codes as part of the induction process.
- 7.53 Any secrecy provisions in relation to board members and officers should be amended to permit the flow of relevant information between the various boards and the Department.

OTHER RECOMMENDATIONS CONCERNING THE DEPARTMENT

- 7.54 In establishing mechanisms to support the boards, the Department will need to consider both the boards' administrative and research requirements.
- 7.55 To ensure the success of the proposed model, the Department will need to implement appropriate and consistent practices in relation to licensing, dealing with complaints, investigations and reporting. These practices should be clearly documented and all relevant officers of the Department should be well trained in application of the various procedures.
- 7.56 The Department also will require adequately qualified and experienced compliance officers in order to take a proactive approach to its supervisory role. Appointment of knowledgeable and experienced staff will be critical given the more limited role of the boards.
- 7.57 To implement the reforms, the current structure of the Consumer Protection Division may need to be reconsidered.

INTERRELATIONSHIP BETWEEN THE BOARDS AND THE DEPARTMENT

- 7.58 It is envisaged that the boards will provide input and advice to the Commissioner and the Minister on legislative and regulatory policy issues. The Minister and Commissioner may also refer matters to the boards for comment and advice from time to time.
- 7.59 The boards will also provide ongoing advice and input in relation to matters such as education, codes of conduct and criteria for the grant of licences.
- 7.60 There will be a need for departmental officers to provide briefings and other advice to the boards on a regular basis in order to support the boards in their advisory role. It is anticipated that reporting frameworks will be implemented to assist with this requirement. In addition, the Department would provide the boards with assistance in relation to any research requirements.
- 7.61 Communication mechanisms between the boards and officers supporting them, and other parts of the Department, will need to be developed and implemented. Appropriate legislative provisions will need to be included in each Act to allow the transfer of information between relevant bodies and to set appropriate limitations on the transfer of that information.

- 7.62 One of the issues raised by the Gunning Inquiry¹²⁰ and the Temby Royal Commission¹²¹ was concern that the boards were too far removed from the compliance process to perform their supervisory role properly. The final model overcomes this particular dilemma by transferring the responsibility for compliance to the Commissioner. However, if a board is to perform an advisory role it is essential that it is briefed by the Department about compliance issues and other relevant matters.
- 7.63 Under the final model, as previously mentioned, the Department would perform an information management function, including the establishment and maintenance of information systems. The Department would also be responsible for making this information available to the boards, the SAT and, where appropriate, the public.

IMPLEMENTATION ISSUES

Resource Implications

- 7.64 For the proposed model to succeed, adequate resourcing of both the boards and the Department is required. The Gunning Committee identified the lack of resources as a major factor contributing to problems with the regulation of the finance broking industry.
- 7.65 The Department currently employs a number of experienced staff who carry out those functions that the Department will undertake under the proposed model, for example compliance and education. Many of these staff perform the functions in their capacity as officers of the boards and may consult board members for advice and input in relation to industry specific issues. An assessment should be undertaken to ensure that the current level of experience and expertise of staff is adequate to effectively and efficiently perform the departmental functions given that input of board members may be diminished. It may be that a few, more experienced, staff members are required, or that current staff need additional training.
- 7.66 Implementation of the model will require extensive legal and administrative changes, and resources will be required in order to undertake those changes.

Legislative Changes Required

- 7.67 Implementation of the proposed model will require significant legislative amendment in relation to a number of matters, including:
- powers and responsibilities of the boards and the Department¹²²;
 - appointment of board members;
 - funding structures;
 - secrecy provisions and reporting requirements; and
 - names of the boards.

¹²⁰ Gunning Report, page 415

¹²¹ Temby Report, page 331

¹²² Amendment will be necessary to ensure that the Department has the relevant legislative power to perform the functions currently carried out by of the boards, particularly in relation to matters involving parties not falling within the definition of "consumer".

- 7.68 If the final model is adopted, the enabling Acts, together with any relevant Regulations, will require amendment. Consequential amendments may be required to other legislation also. The required amendments are similar and should be undertaken contiguously or simultaneously. An omnibus Bill should be considered for this purpose.
- 7.69 Amendments in relation to the disciplinary hearing function and review of decisions have been made as part of the SAT reforms. The balance of amendments will need to be undertaken as soon as possible.

Funding Issues

- 7.70 Consideration will need to be given to the allocation of funds in the implementation of this model. There are inconsistencies in the current funding arrangements in that some boards are completely self-funded, some are completely funded by government and others receive funding from both sources.
- 7.71 The continued funding of the boards in their licensing and advisory role will be necessary, although the level of funding required will be somewhat lower than that currently allocated to the boards. Resource agreements would cover allocation of non-consolidated fund resources for self funded boards.
- 7.72 For boards that are not regarded as self-funded, when funds are received in the form of licence fees, or from other sources specific to particular industries, decisions will be required as to whether the funds are earmarked for that industry or form part of consolidated revenue.
- 7.73 In addition, consideration will need to be given to a review of current licensing fees and the implementation of a consistent approach to the setting of fees.

Other Issues

Motor Vehicle Repairers

- 7.74 The *Motor Vehicle Repairers Act 2003* and the *Motor Vehicle Dealers Amendment Act 2003* were passed by Parliament in December 2003¹²³. The Acts establish a system of licensing for repairers and certification for tradespersons and provide for the Motor Vehicle Industry Board to have jurisdiction in relation to motor vehicle repairers. It is intended that the proposed structure and functions arising from this review, which will apply to the regulation of motor vehicle dealers, will also be applied to the scheme for regulation of motor vehicle repairers.

Building Disputes Tribunal

- 7.75 The Building Disputes Tribunal will continue to determine contractual and workmanship building disputes. Under the final model, inspectors employed by the Department would provide the necessary reports to the Tribunal, in the same manner as inspectors currently employed by the Builders' Registration Board.

¹²³ The *Motor Vehicle Dealers Amendment Act 2003* came into operation in December 2004. It is anticipated that relevant sections of the *Motor Vehicle Repairers Act 2003* will come into effect later in 2005.

- 7.76 The Painters' Registration Board currently has the power to make orders requiring painters to remedy unsatisfactory work or pay the costs of remedying painting work. The Building Disputes Tribunal performs a similar function in relation to building work. It is recommended that the Building Disputes Tribunal perform this function in relation to painting work also, but would have a painting industry representative sitting on the Tribunal instead of a building industry representative.

Licensing of Other Industry Occupations

- 7.77 The SAT Amendment Act provides for:
- the transfer of the original decision making jurisdiction in relation to the licensing of debt collectors from the Local Court to the Commissioner for Fair Trading; and
 - the transfer of the Commercial Tribunal's licensing function for credit providers, employment agents and travel agents to the Commissioner for Fair Trading.
- 7.78 The licensing authority for these occupations will therefore be the Commissioner, supported by the Department. No new boards will be created and any consultation with industry will be carried out on an ad-hoc basis, as required.
- 7.79 In order to achieve consistency across the licensed occupational groups, the licensing, compliance and other provisions will be amended in line with the recommended model, if appropriate. It is proposed that the power to prescribe a code of conduct be included in the *Debt Collectors Licensing Act 1964* similar to other occupational groups, such as real estate agents, settlement agents and land valuers. It is anticipated that the code of conduct will deal with matters such as debtor harassment.

CONCLUSION

- 7.80 The final model has addressed Machinery of Government Taskforce principles by transferring to the Department those functions of the boards that can be appropriately performed by the Department. Consumers and businesses will be able to go to a single body for business licensing, registration of names, queries and complaints.
- 7.81 The boards will retain responsibility for the granting of licences to ensure that relevant industry expertise is retained in the licensing process.
- 7.82 The Department, as the body responsible for the compliance function, will fully control the performance of that function, thus improving accountability. Streamlined processes and consistent approaches can be designed and implemented by the Department in relation to matters such as processing of licence applications and investigations.
- 7.83 Natural justice concerns, arising out of a situation in which the same body has been carrying out both the compliance and disciplinary functions, will be addressed, with the separation of these responsibilities between the SAT and the Department. Greater clarity will be achieved with regards to delineation of responsibilities and the potential for conflicts of interest will be reduced.

7.84 Industry experience, knowledge and expertise will be retained in the process, with industry and consumers representatives providing policy advice to the Department and the Minister on relevant issues. Further, a more balanced representation on the boards may address any perception of bias.

8 CONSUMER PROTECTION COMMITTEES

OVERVIEW OF FUNCTIONS

- 8.1 Consumer Protection committees in the Consumer and Employment Protection portfolio are essentially advisory bodies, but have widely disparate functions. Their primary function, in most cases, is to provide advice to the Minister or to the Commissioner regarding a range of consumer-related matters.
- 8.2 A brief description of the principal functions of each Committee, the membership composition and other characteristics can be found at Appendix E.

Charitable Collections Advisory Committee

- 8.3 The Charitable Collections Advisory Committee is established under the *Charitable Collections Act 1946 (WA)*. The Committee provides independent advice to the Minister in relation to applications for licences and other charitable collections issues (the Minister is the licensing authority). It also makes recommendations to the Minister in respect of the revocation of licences.
- 8.4 The Committee meets monthly and is funded from the Consolidated Fund (through the Department's budget). New legislation regulating public collections is being developed which will affect the role of this committee.

Consumer Products Safety Committee

- 8.5 The Consumer Product Safety Committee is established under the *Consumer Affairs Act 1971 (WA)*. The Committee investigates the safety of goods referred to it by the Minister or Commissioner and makes recommendations to the Commissioner in respect of those goods. The Committee can make recommendations to prohibit, restrict the supply of, or recall goods that are unsafe. The Committee has powers of inquiry in conducting its investigations and may require persons to give evidence, produce goods or documents and answer questions.
- 8.6 The Committee meets as required and is funded from the Consolidated Fund (through the Department's budget).

Home Buyers Advisory Committee

- 8.7 The Home Buyers Advisory Committee is a statutory sub-committee of the Real Estate and Business Agents Supervisory Board that makes recommendations to the Real Estate and Business Agents Supervisory Board in respect of applications under the Home Buyers Assistance Scheme. The Committee also considers matters referred to it by the board in relation to the creation of the fund and makes recommendations to the board on the formulation of criteria under which the board approves grants.
- 8.8 The Committee meets as required and is fully funded by the Real Estate and Business Agents Supervisory Board.

Petroleum Products Prices Advisory Committee

- 8.9 The Petroleum Products Prices Advisory Committee is established under the *Petroleum Products Pricing Act 1983 (WA)*. The Act provides that the Minister may appoint one or more prices advisory committees to advise¹²⁴ whether or not petroleum products or services should be declared (the Prices Commissioner may fix prices in relation to declared goods or services) and whether or not maximum prices should be fixed in relation to those products or services.
- 8.10 The terms of reference of the current Petroleum Product Prices Advisory Committee define the role of the Committee as providing advice to the Minister and/or the Prices Commissioner on issues affecting the petroleum market in Western Australia as identified by the Minister or the Prices Commissioner. These issues may include the maximum wholesale price, retail price capping in regional areas, issues associated with the differential between city and country prices and any other matters referred to it by the Minister or the Prices Commissioner for consideration.
- 8.11 The Committee meets as required and is funded from the Consolidated Fund (through the Department's budget).

Retail Shops Advisory Committee

- 8.12 The Retail Shops Advisory Committee investigates and makes recommendations to the Minister in relation to the operation and administration of the *Retail Trading Hours Act 1987 (WA)*. The committee also makes recommendations to the Chief Executive Officer of the Department (the Director General) on the issue of permits for retailers to remain open beyond normal hours or to provide goods or services that are not prescribed.
- 8.13 The Committee meets as required and is funded from the Consolidated Fund (through the Department's budget).

DISCUSSION

- 8.14 The majority of submissions to this review commented on the operation of consumer protection boards, rather than the functions of the committees. Some submissions did make specific reference to the committees. In addition, some issues applicable to the consumer protection boards are equally applicable to the consumer protection committees. The following analysis identifies some of the strengths and weaknesses of advisory committees and alternative forms of consultation.

¹²⁴ a title also held by the Commissioner for Fair Trading

Committees

- 8.15 The various advisory committees have been appointed for a specific purpose or role and maintain a specific focus in relation to that role. It has been submitted that some of these specific bodies should be retained because a general advisory body would not be suitably structured for the more detailed consideration required in relation to specific issues such as product safety¹²⁵.
- 8.16 Like boards, advisory committees bring together the specialised knowledge and experience appropriate for dealing with relevant issues. It has been submitted that advisory bodies, with informed and trained personnel, provide an effective means of canvassing community opinion by seeking the views of community representatives¹²⁶.
- 8.17 The Committees have a more balanced membership, in relation to the mix of consumer and industry representatives. The submissions did not reveal evidence of any perceptions of bias in relation to the operation of committees.
- 8.18 It was submitted that there needs to be more flexibility in the committee process to permit involvement by consumer representatives, such as holding meetings outside of business hours. It was also suggested that training and induction is also needed for committee members¹²⁷.
- 8.19 It has been submitted that the Department or a peak advisory body could adequately perform the functions of the Home Buyers Advisory Committee¹²⁸.

Alternative forms of consultation

- 8.20 It has been suggested that calling for submissions does provide an effective opportunity for the public to raise issues. The resulting submissions may not necessarily reflect general community opinion¹²⁹ and may only attract comments from those persons with a grievance or vested interest¹³⁰. However, it was acknowledged that other methods of broad public consultation, such as surveys, are often expensive¹³¹. Advisory committees should provide some balanced public opinion, without the need for expensive surveys or other means of consultation.

¹²⁵ Consumer Product Safety Committee submission page 1

¹²⁶ Joan Milne submission page 3

¹²⁷ Glenda Lewis submission page 4

¹²⁸ Real Estate and Business Agents Supervisory Board submission page 29

¹²⁹ Joan Milne submission, page 3

¹³⁰ Glenda Lewis submission, page 4

¹³¹ Glenda Lewis submission, page 4

- 8.21 The creation of a peak consumer body received some support¹³² and has happened in other jurisdictions such as New South Wales. However, it has been submitted that, if a peak consumer protection body is to be established, it would require a strong commitment from government financially in order to function and survive. Less than that would only provide token consumer representation¹³³.

RECOMMENDED ARRANGEMENT FOR COMMITTEES

- 8.22 There appears to be general support for the retention of the committees provided that their functions could not be adequately performed by another body. Advisory bodies provide an effective and cost efficient method of obtaining community and industry input in relation to specific consumer protection issues.
- 8.23 It is recommended that the Retail Shops Advisory Committee, the Consumer Products Safety Committee and the Petroleum Products Prices Advisory Committee be retained in their current form.
- 8.24 The Home Buyers Advisory Committee has the limited functions of:
- issuing guidelines for the processing of applications for assistance;
 - considering applications for assistance referred to it by the Registrar;
 - making recommendations to the Real Estate and Business Agents Supervisory Board on the formulation of criteria for granting of assistance; and
 - considering matters referred to it by the board and advising on those matter.
- 8.25 There is no reason why the functions of this committee could not be performed by the Department with advice from the Real Estate and Business Agents Supervisory Board.
- 8.26 It is recommended that the Home Buyers Advisory Committee be disbanded and its functions assumed by the Department and the Real Estate and Business Agents Supervisory Board.
- 8.27 A review of the *Charitable Collections Act 1946 (WA)* is currently being undertaken and the continued existence and role of the Charitable Collections Advisory Committee is being considered as part of that review. It is intended that the current *Charitable Collections Act 1946 (WA)* and the *Street Collections (Regulation) Act 1940 (WA)* be updated and replaced with the *Public Collections Bill*. While the Bill as drafted does not specifically provide for an advisory committee, it is possible for the Commissioner to establish an advisory committee on an administrative basis.
- 8.28 As with boards, it is also recommended:
- memoranda of understanding or charters should be developed that define the roles and relationships of the committee, the Department and the Minister;
 - committee members should be appointed based on qualifications, rather than representational status, pursuant to an open and transparent process using relevant selection criteria; and

¹³² Property Council submission, page 1; Verity Cripps submission, page 1; Council on Ageing submission, page 1

¹³³ Joan Milne submission, page 3

- committee members should be provided with adequate training and induction in relation to their duties as committee members.

APPENDICES

Terms of Reference

The terms of reference endorsed by the Minister for Consumer and Employment Protection are to consider:

1. Whether it is appropriate for functions of the boards and committees to be performed by the Department;
2. How to best meet needs of specific industry and consumer groups;
3. Whether any key factors prevent a board or committee from being absorbed into the Department with particular consideration being given to whether the board or committee:
 - is established by an Act of Parliament;
 - is externally funded; and
 - is specific to an industry;
4. Whether there are more effective ways to structure and resource the Consumer Protection boards and committees, listing advantages and disadvantages, with consideration also being given to:
 - whether there are logical groupings with respect to functions;
 - whether there are logical groupings with respect to providing resources;
 - membership; and
 - reporting and lines of responsibility;
5. Identification of disciplinary roles that would need to be referred to the Western Australian Civil and Administrative Review Tribunal (WACART);
6. Any relevant issues arising from the initial report of the Taskforce established to progress the development of a WACART;
7. Any relevant issues arising from the recommendations of the Temby Royal Commission;
8. Efficiencies that could be implemented, should the review conclude that a board or committee should remain as a statutory authority; and
9. Other matters of relevance to the future of a board or committee, including performance to date.

Department of Premier and Cabinet Guidelines for the Review of Boards and Committees

Effectiveness

1. Consider the effectiveness of the board or committee in terms of how the board or committee contributes to the delivery of Government and Departmental objectives.
2. Issues to consider include whether:
 - a. the activity undertaken by the board or committee is essential to Government and Departmental policy objectives;
 - b. the board or committee has achieved its performance targets (if relevant) and in meeting those targets whether the board or committee contributed to the delivery of Ministerial objectives; and
 - c. the board or committee has informed the development of policy.

Relevance and Independence

3. Consider whether there is a continuing need for the functions to be undertaken by the board or committee and, if not, whether the board or committee can be abolished.
4. Issues to consider include whether:
 - a. the functions of the board or committee can be done within the relevant Department or agency;
 - b. there is a need for the functions of the board or committee to be performed independently;
 - c. there are other bodies that carry out similar or complementary functions and, if so, whether the functions of the board or committee can be transferred to one of these other bodies;
 - d. advice can be sought on an ad hoc basis through consultation with industry or some other non-Government organisation instead;
 - e. the terms of reference of the board or committee enable it to fulfil its role in delivering government or departmental objectives;
 - f. the functions of the board or committee can be more effectively delivered by the private or non-government sector;
 - g. the functions of the board or committee can be reconstituted as a body led through the private or non-government sector; and
 - h. whether the board or committee is operating in an open and transparent manner.
5. The existence of joint funding arrangements will need to be considered in some cases.

Appointment and Remuneration

6. Consider whether the board or committee provides value for money.
7. Issues to consider include whether:
 - a. the level of remuneration of board and committee members, if relevant, is appropriate; and
 - b. the mix of skills and experience amongst the board or committee members is appropriate for the functions being undertaken by the board or committee;
 - c. existing board or committee members are performing to expectations; and
 - d. appointments procedures are operating effectively.

Administrative Arrangements and Reporting Requirements

8. Consider the appropriateness and adequacy of administrative support provided to committees and the frequency and level of reporting of board and committee outcomes.

List of Submissions - Issues Paper

Boards and Committees

Builders' Registration Board
Consumer Products Safety Committee
Hairdressers Registration Board (some members)
Land Valuers Licensing Board
Motor Vehicle Industry Board
Painters' Registration Board
Plumbers Licensing Board
Real Estate and Business Agents Supervisory Board
Settlement Agents Supervisory Board

Industry Associations

Australian Institute of Conveyancers (WA Division)
Building Trades Licensing Group
Craig Cheatham (Global Federation of Real Estate Regulatory Agencies)
Housing Industry Association
Master Builders Association
Master Painters Association
Master Plumbers and Gasfitters Association
Property Council
Real Estate Institute of Western Australia
Chamber of Commerce & Industry (WA)

Consumer Associations

Royal Automobile Club of WA (Inc)

Government Bodies

Auditor General
Consumer Products Safety Committee
Council on Ageing
Department of Housing and Works
Department of Treasury and Finance
Legal Prosecution Services Unit (DOCEP)
Department of Tourism, Racing and Fair Trading (Queensland)
Office of Consumer and Business Affairs (South Australia)
Police Department of Western Australia
Valuer Generals Office
Western Australian Local Government Association

Individuals - Board/Committee Members (Current and Former)

D.A. Forrester (Building Disputes Tribunal)
David Dawes (former Chair of Real Estate and Business Agents Supervisory Board)
David Liggins (Land Valuer, Deputy Member of Finance Brokers Supervisory Board)
John Smith-Gander (Building Disputes Tribunal)
Glenda Lewis (Consumers Association, Retail Shops Advisory Committee, Building Disputes Tribunal)
Joan Milne (Consumers Association, Retail Shops Advisory Committee, Building Disputes Tribunal)
Ron Anderson (Building Disputes Tribunal)
Verity Cripps (consumer representative on various boards)

Individuals

Carl Erik Lens
Robert Kline

List of Submissions - Consultation Draft

Boards and Committees

Builders' Registration Board*

Electrical Licensing Board

Land Valuers Licensing Board*

Motor Vehicle Industry Board*

Plumbers Licensing Board*

Real Estate and Business Agents Supervisory Board*

Industry Associations

Australian Hotels Association

Australian Institute of Building

Australian Institute of Conveyancers (WA Division)*

Australian Property Institute (formerly Australian Institute of Valuers)

Communications Electrical and Plumbing Union

Construction Contractors Association of WA

Electrical Contractors Association

Housing Industry Association*

Master Painters Association*

Master Plumbers Association

Motor Trade Association of WA

Real Estate Institute of Western Australia*

Royal Australian Institute of Architects

Western Australian Drainage Association Inc

WRAPS Industry Training Council

Consumer Associations

Consumers' Association of WA

Government Bodies

Department of Housing and Works*

Small Business Development Corporation

Individuals - Board/Committee Members (Current and Former)

Ron Anderson (Building Disputes Tribunal)*

Valdene Buckley (Consumers Association, Building Disputes Tribunal)

Valerie Haskins (Settlement Agents Supervisory Board)

Joan Milne (Consumers Association, Retail Shops Advisory Committee, Building Disputes Tribunal)

Individuals

Stuart Henry (Master Plumbers Association)

Glen Holland (electrical worker)

Richard Morhall

Phil Roberg (electrical training)

* Denotes that submission also received in response to the Issues Paper

Consumer Protection Boards - Summary of Functions, Membership and Structure

REAL ESTATE AND BUSINESS AGENTS SUPERVISORY BOARD	
Legislation	<i>Real Estate & Business Agents Act 1978 (WA)</i> <i>Real Estate & Business Agents (General) Regulations 1979 (WA)</i> <i>Code of Conduct for Agents and Sales Representatives</i>
<i>Membership</i>	
Number of board members	5 members
Qualifications	Chairperson (who is not a licensed agent) 1 person not a licensed agent experienced in commercial matters 1 person not a licensed agent who is a legal practitioner 1 licensed person (elected by licensed agents) 1 licensed person nominated by the Real Estate Institute of Western Australia
Remuneration of board members	Chair - \$55,900 per annum, Members - \$18,400 per annum, (Member acting as Chair - \$26 550 per annum) Deputy Members - \$266 full day, \$176 half day (Deputy Member acting as Chair: \$399 full day, \$263 half day)
<i>Principal Functions</i>	
Licensing	Licensing of real estate and business agents and registration of developers and sales representatives
Investigations	Yes
Disciplinary hearings or inquiries	No (jurisdiction to hear disciplinary matters transferred to the State Administrative Tribunal, however, the Board may be required to finalise determination of some disciplinary matters during a transitional period)
Management of Funds	Fidelity Guarantee Fund, General Purpose and Education, Board Trust Accounts, Home Buyers Assistance
Other functions	Advise Minister on administration of Act and regulations. Conduct and promote education and provide advisory services Conciliation Prescription of codes of conduct Education Overseeing agents trust accounts
<i>Administrative matters</i>	
Source of funding	Self funded (licence and registration fees and interest on trust accounts and investments)
Employment of Staff	Employed by board Service delivery agreement with the Department

SETTLEMENT AGENTS SUPERVISORY BOARD	
Legislation	<i>Settlement Agents Act 1981 (WA)</i> <i>Settlement Agents Regulations 1982 (WA)</i> <i>Settlement Agents' Code of Conduct 1982 (WA)</i> <i>Settlement Agents (Remuneration) Notice 2000 (WA)</i>
Membership	
Number of board members	5 members
Qualifications	Chairperson (who is not a licensed agent) 1 person not a licensed agent experienced in commercial matters 1 person not a licensed agent who is a legal practitioner 2 licensed persons (elected by licensed agents)
Remuneration of board members	Chair - \$399 full day, \$266 half day Members - \$266 full day, \$176 half day
Principal Functions	
Licensing	Licensing of settlement agents
Investigations	Yes
Disciplinary hearing or inquiries	No (jurisdiction to hear disciplinary matters transferred to the State Administrative Tribunal, however, the Board may be required to finalise determination of some disciplinary matters during a transitional period)
Management of Funds	Fidelity Guarantee Fund, General Purpose and Education, Board Trust Accounts
Other functions	Advise Minister on administration of Act and regulations. Conduct and promote education and provide advisory services Prescribing maximum fees Prescription of codes of conduct Education Overseeing agents trust accounts
Administrative matters	
Source of funding	Self funded (licence and registration fees and interest on investments)
Employment of Staff	Employed by Board Service delivery agreement with the Department

LAND VALUERS LICENSING BOARD	
Legislation	<i>Land Valuers Licensing Act 1978 (WA)</i> <i>Land Valuers Licensing Regulations 1979 (WA)</i> <i>Code of Conduct (WA)</i> <i>Land Valuers Licensing (Remuneration) Notice 2000 (WA)</i>
<i>Membership</i>	
Number of board members	5 members
Qualifications	Chairperson (must be a legal practitioner) 1 person nominated by the Minister 1 experienced valuer nominated by the Minister from a panel of names submitted by REIWA 2 experienced valuers nominated by the Minister from a panel of names submitted by the Australian Property Institute
Remuneration of board members	Chair \$470 full day, \$310 half day Members \$320 full day \$210 half day
<i>Principal Functions</i>	
Licensing	Licensing of land valuers
Investigations	Yes
Disciplinary actions	No (jurisdiction to hear disciplinary matters transferred to the State Administrative Tribunal, however, the Board may be required to finalise determination of some disciplinary matters during a transitional period)
Management of Funds	No
Other functions	Advice to the Minister Prescribing maximum fees Prescribing codes of conduct Conduct examinations and appoint examiners
<i>Administrative matters</i>	
Source of funding	Consumer Protection (Consolidated Fund)
Employment of Staff	Employees of Consumer Protection

BUILDERS' REGISTRATION BOARD	
Legislation	<i>Builders' Registration Act 1939 (WA)</i> <i>Builders' Registration Regulations (WA)</i>
<i>Membership</i>	
Number of board members	7 members
Qualifications	Chairperson (must be a legal practitioner) 1 member representing Royal Institute of Architects; 1 member representing Master Builders Association of WA; 1 member representing Builders' Trades Association of Unions of WA; 1 member representing Housing Industry Association of WA; and 1 member to represent builders outside metropolitan area 1 member representing consumers
Remuneration of board members	Chair: \$150 per hour Members: \$308 full day, \$203 half day
<i>Principle Functions</i>	
Licensing	Registration of builders
Investigations	Yes
Disciplinary hearings or inquiries	No (jurisdiction to hear disciplinary matters transferred to the State Administrative Tribunal, however, the Board may be required to finalise determination of some disciplinary matters during a transitional period)
Management of Funds	Yes
Other functions	Set workmanship standards Determine training and examination requirements Education
<i>Administrative matters</i>	
Source of funding	Self funded (registration fees, building licence levies, complaint application fees)
Employment of Staff	Employed by Board

PAINTERS' REGISTRATION BOARD	
Legislation	<i>Painters' Registration Act 1961 (WA)</i> <i>Painters' Registration Board Rules 1962 (WA)</i>
Membership	
Number of board members	5 members
Qualifications	Chair (must be legal practitioner) 3 industry representative nominated by: Australian Paint Manufactures Federation Master Painters Decorators and Sign-writers Assoc of WA Operative Painters and Decorators Union of Australia 1 member representing consumers
Remuneration of board members	Chair: \$150 per hour Members: \$308 full day, \$203 half day
Principal Functions	
Licensing	Registration of painters
Investigations	Yes
Disciplinary hearings or inquiries	No (jurisdiction to hear disciplinary matters transferred to the State Administrative Tribunal, however, the Board may be required to finalise determination of some disciplinary matters during a transitional period)
Management of Funds	Yes
Other functions	Set workmanship standards Investigate painting work, as requested Make work orders to remedy unsatisfactory work Prescribe examination requirements
Administrative matters	
Source of funding	Self funded (Registration fees)
Employment of Staff	Employed by Board

HAIRDRESSERS REGISTRATION BOARD	
Legislation	<i>Hairdressers Registration Act 1946 (WA)</i> <i>Hairdressers Registration Regulations 1965 (WA)</i>
<i>Membership</i>	
Number of board members	5 members
Qualifications	Chairperson 1 hairdresser representing Master Hairdressers Assoc of WA, 1 hairdresser representing Master Ladies Hairdressers Assoc of WA; 2 hairdressers representing the Hairdressers and Wigmakers Employees Union of Workers
Remuneration of board members	Chair: \$280 full day, \$185 half day Members: \$186 full day, \$123 half day
<i>Principal Functions</i>	
Licensing	Registration of Hairdressers
Investigations	Yes
Disciplinary actions	No (jurisdiction to hear disciplinary matters transferred to the State Administrative Tribunal, however, the Board may be required to finalise determination of some disciplinary matters during a transitional period)
Management of Funds	Yes
Other functions	Holding examinations Making recommendation to health authorities regarding hygiene and sanitation standards
<i>Administrative matters</i>	
Source of funding	Self funded (Registration fees)
Employment of Staff	Employed by Board

PLUMBERS LICENSING BOARD	
Legislation	<i>Water Services Coordination Act 1995 (WA)</i> <i>Water Services Coordination (Plumbers Licensing) Regulations 2000 (WA)</i>
Membership	
Number of board members	7 members
Qualifications	Chairperson 1 persons with knowledge and experience in the plumbing industry nominated by the Master Plumbers and Mechanical Services Association 1 person with knowledge and experience in the plumbing industry nominated by the Western Australian Drainage Association 1 person with knowledge and experience in the plumbing industry nominated by the relevant union, 1 person with knowledge and experience in the plumbing industry nominated by the Minister; 2 member representing consumers
Remuneration of board members	Chair: \$470 full day, \$310 half day Members: \$320 full day, \$210 half day
Principal Functions	
Licensing	Licensing of plumbers and tradespersons
Investigations	Yes
Disciplinary hearings or inquiries	No (jurisdiction to hear disciplinary matters transferred to the State Administrative Tribunal, however, the Board may be required to finalise determination of some disciplinary matters during a transitional period)
Management of Funds	Yes
Other functions	Monitor and advise on training standards
Administrative matters	
Source of funding	Self funded (Licence fees)
Employment of Staff	Employed by DOCEP

MOTOR VEHICLE INDUSTRY BOARD	
Legislation	<i>Motor Vehicle Dealers Act 1973 (WA)</i> <i>Motor Vehicle Dealers (Licensing) Regulations 1974 (WA)</i>
Membership	
Number of board members	9 members
Qualifications	Chairperson 2 persons with knowledge and experience in the motor vehicle dealing industry 2 persons with knowledge and experience in the motor vehicle repair industry 1 person nominated by the Minister from a panel of names provided by the Royal Automobile Club of WA (Inc) 3 person representing consumers
Remuneration of board members	Chair : \$470 Full Day, \$310 Half Day Members : \$320 Full Day, \$210 Half Day
Principal Functions	
Licensing	Licensing of motor vehicle dealers, car market operators, yard managers and salespersons. Will also licence motor vehicle repair businesses and register individual repairers.
Investigations	Yes
Disciplinary hearings or inquiries	No (jurisdiction to hear disciplinary matters transferred to the State Administrative Tribunal, however, the Board may be required to finalise determination of some disciplinary matters during a transitional period)
Management of Funds	Motor Vehicle Repair Industry Compensation Fund (Compensation Fund) Motor Vehicle Repair Industry Education and Research Fund (Education Fund) Both Funds are yet to be established
Other functions	Approve courses (and persons who provide courses) for the training of dealers, yard managers and sales persons
Administrative matters	
Source of funding	Consumer Protection (Consolidated Fund), though consideration is being given to funding the Board from retained revenue. However, the Compensation Fund and the Education Fund will be funded from motor vehicle repairer licence fees.
Employment of Staff	Employees of Consumer Protection

BUILDING DISPUTES TRIBUNAL	
Legislation	<i>Builders' Registration Act 1939 (WA)</i>
Composition & Membership	3 members (as below)
Qualifications / Eligibility	Chairperson (must be the Chairperson of Builders' Registration Board) 1 from panel of persons representing consumer interests 1 from panel of persons representing builders interests (selected from persons nominated by Master Builders Association and Housing Industry Association)
Principal Functions	To hear and settle contractual and workmanship disputes between consumers and builders
Source Of Funding	Builders' Registration Board

Consumer Protection Committees - Summary of Functions, Membership and Structure

PETROLEUM PRODUCTS PRICES ADVISORY COMMITTEE	
Legislation	<i>Petroleum Products Pricing Act 1983 (WA)</i>
Principal Functions	To advise the Minister or Commissioner whether or not petroleum products or services should be declared
	To advise the Minister or Commissioner whether or not maximum prices should be fixed in relation to declared petroleum products or services
Composition & Membership	7 members (as below)
Qualifications / Eligibility	Chairperson Maximum of 3 trader representatives (suppliers of petroleum products or services) and an equal number of consumer representatives
Source Of Funding	Consumer Protection (Consolidated Fund)

HOME BUYERS ADVISORY COMMITTEE	
Legislation	<i>Real Estate and Business Agents Act 1978 (WA)</i>
Principal Functions	To consider applications for financial assistance from first home buyers and make recommendations to REBA
Composition & Membership	3 members (as below)
Qualifications / Eligibility	Chairperson ex officio 1 shall be a person with experience in commercial finance 1 shall be an officer of The State Housing Commission
Source Of Funding	Real Estate and Business Agents Supervisory Board (REBA)

RETAIL SHOPS ADVISORY COMMITTEE	
Legislation	<i>Retail Trading Hours Act 1987 (WA)</i>
Principal Functions	To investigate and make recommendations to the Minister relating to the operation and administration of the Act. Make recommendations to the Commissioner of Fair Trading on the issue of permits to remain open or to provide goods or services that are not prescribed.
Composition & Membership	15 members (as below)
Qualifications / Eligibility	Chairperson (must be the CEO or their nominee) 2 persons nominated by the WA Council of Retail Associations; 1 person nominated by the Retail Traders Association of WA (Inc); 1 person nominated by the WA Chamber of Commerce and Industry (Inc); 4 persons nominated by the Shop Distributive and Allied Employees Association of Western Australia; 5 persons who, in the opinion of the Minister, are representative of consumers; and 1 person who, in the opinion of the Minister, represents the tourist industry.
Source Of Funding	Consumer Protection (consolidated fund)

CONSUMER PRODUCT SAFETY COMMITTEE	
Legislation	<i>Consumer Affairs Act 1971 (WA)</i>
Principal Functions	Make recommendations to the Commissioner for Fair Trading that prohibit or restrict the supply of goods
Composition & Membership	7 members (as below)
Qualifications / Eligibility	Chairperson (must be an officer of Consumer Protection) 6 persons who, in the opinion of the Minister, have expertise in product safety.
Source Of Funding	Consumer Protection (Consolidated Fund)

CHARITABLE COLLECTIONS ADVISORY COMMITTEE	
Legislation	<i>Charitable Collections Act 1946 (WA)</i>
Principal Functions	To advise the Minister in relation to applications for licences To conduct inquiries and make recommendations to the Minister in respect of the revocation of licences
Composition & Membership	5 members
Qualifications / Eligibility	Chairperson 4 persons appointed by the Governor upon the recommendation of the Minister
Source Of Funding	Consumer Protection (Consolidated Fund)