Premier’s Circular

Number 21/01
Issue Date: 26/10/01
Review date: 01/07/02

TITLE

REVIEW OF STATUTORY AUTHORITIES

POLICY

Cabinet has determined a set of criteria to guide the review of statutory authorities and a process designed to meet the commitment to complete the reviews by 1 July 2002. Ministers are responsible for ensuring the completion of reviews of authorities in their portfolios by the deadline.

Each Minister is to submit by 31 October 2001 a timetable for reviews of statutory authorities in his or her portfolio. The timetable should be addressed to:

Dr Ross Field
A/Director General
Department of the Premier and Cabinet
197 St George’s Terrace
Perth WA 6000

The timetable should list each statutory authority, expected commencement and completion dates of the review, the proposed mode of review (by the Minister’s department, external consultants, etc.) and details of a contact person. If methodology and contacts are not yet settled, they can be provided later when available.

SCOPE

For the purpose of this review, statutory authorities are considered to be the authorities listed in Attachment 1.

…/2
In cases where there have been policy statements supporting the continued existence of a statutory authority a review should still be conducted. In that case and where a review supports the continued existence of an authority the review should address the authority’s performance, efficiency and effectiveness.

Note also, that in order to avoid duplication of effort, where a review is currently being conducted or is required to be conducted by virtue of an Authority’s statute, the enclosed procedures provide for recognition of this for the purposes of this review.

GUIDELINES

Attachment 2 contains guidelines and a process to be used for the reviews.

Review costs are to be absorbed by portfolios.

DR GEOFF GALLOP MLA
PREMIER

For enquiries contact: James Thom
Public Sector Management Division
Department of the Premier and Cabinet
Telephone 9222 8713

Other relevant Circulars: Nil
Circulars replaced by this Circular: Nil
ATTACHMENT 1

STATUTORY AUTHORITIES BY PORTFOLIO

Premier; Minister for Public Sector Management; Federal Affairs; Science; Citizenship and Multicultural Interests

Premier:
- Anti-Corruption Commission

Deputy Premier; Treasurer; Minister for Energy

Treasurer:
- WA Treasury Corporation
- Anzac Day Trust

Energy:
- Electricity Corporation (Western Power) (NOT TO BE REVIEWED)
- Perth International Centre for Application of Solar Energy

Minister for Agriculture, Forestry and Fisheries; the Midwest, Wheatbelt and Great Southern

Agriculture, Forestry and Fisheries:
- Agricultural Practices Board WA
- Agricultural Produce Commission
- Agriculture Protection Board of WA
- Forest Products Commission (TO BE REVIEWED IN 2005)
- Grain Pool of WA
- Landcare Trust
- Perth Market Authority
- Potato Marketing Corporation of WA
- Rural Business Development Corporation
- WA Egg Marketing Board
- WA Meat Industry Authority

Minister for Housing and Works; Local Government and Regional Development; the Kimberley, Pilbara and Gascoyne

Housing and Works:
- Country Housing Authority
- Government Employees Housing Authority
- State Housing Commission
- State Supply Commission
- WA Building Management Authority
Local Government and Regional Development:
(Note: All regional Development Commissions are listed here on the basis that a common approach can be adopted when considering them)
- Fremantle Cemetery Board
- Gascoyne Development Commission
- Goldfields-Esperance Development Commission
- Great Southern Development Commission
- Kimberley Development Commission
- Metropolitan Cemeteries Board
- Mid-West Development Commission
- Peel Development Commission
- Pilbara Development Commission
- South West Development Commission
- Wheatbelt Development Commission

Minister for Consumer and Employment Protection; Training

Consumer and Employment Protection:
- Workers’ Compensation and Rehabilitation Commission

Training:
- Building and Construction Industry Training Board
- C Y O’Connor College of TAFE
- Central TAFE
- Central West College of TAFE
- Challenger TAFE
- Eastern Pilbara College of TAFE
- Great Southern TAFE
- Kimberley College of TAFE
- Midland College of TAFE
- South East Metropolitan College of TAFE
- South West Regional College of TAFE
- West Coast College of TAFE
- West Pilbara College of TAFE

Attorney General; Minister for Justice and Legal Affairs; Electoral Affairs; Peel and the South West

Attorney General:
- Law Reform Commission of WA
- Legal Aid Commission of WA
- Public Trustee
### Minister for the Environment and Heritage

Environment and Heritage:
- Botanic Parks and Gardens Authority
- Conservation Commission
- Environmental Protection Authority
- Heritage Council of WA
- Keep Australia Beautiful Council
- Marine Parks and Reserves Authority
- National Trust of Australia (WA)
- Swan River Trust
- Water and Rivers Commission
- Zoological Gardens Board

### Minister for Police and Emergency Services; Minister Assisting the Minister for Planning and Infrastructure

Police and Emergency Services:
- Fire and Emergency Services Authority
- Police Service (NOT TO BE REVIEWED)

Assisting the Minister for Planning and Infrastructure:
- Eastern Goldfields Transport Board

### Minister for Planning and Infrastructure

Planning and Infrastructure:
- Albany Port Authority (NOT TO BE REVIEWED)
- Broome Port Authority (NOT TO BE REVIEWED)
- Bunbury Port Authority (NOT TO BE REVIEWED)
- Dampier Port Authority (NOT TO BE REVIEWED)
- East Perth Redevelopment Authority
- Esperance Port Authority (NOT TO BE REVIEWED)
- Fremantle Port Authority (NOT TO BE REVIEWED)
- Geraldton Port Authority (NOT TO BE REVIEWED)
- Main Roads Western Australia
- Metropolitan (Perth) Passenger Transport Trust
- Midland Redevelopment Authority
- Port Hedland Port Authority (NOT TO BE REVIEWED)
- Subiaco Redevelopment Authority
- WA Coastal Shipping Commission
- WA Government Railways Commission
- WA Land Authority (LandCorp)
- WA Planning Commission
Minister for State Development; Tourism; Small Business

State Development:
- Minerals and Energy Research Institute of WA

Tourism:
- Rottnest Island Authority
- WA Tourism Commission

Small Business:
- Small Business Development Corporation

Minister for Education; Sport and Recreation; Indigenous Affairs

Education:
- Country High School Hostels Authority
- Curriculum Council
- Trustees of the Public Education Endowment

Sport and Recreation:
- Recreation Camps and Reserves Board
- WA Boxing Commission
- WA Sports Centre Trust

Indigenous Affairs:
- Aboriginal Affairs Planning Authority
- Aboriginal Lands Trust

Minister for Community Development, Women’s Interests, Seniors and Youth; Disability Services; Culture and the Arts

Disability Services:
- Disability Services Commission

Culture and the Arts:
- Art Gallery of WA
- Library and Information Service of WA
- Perth Theatre Trust
- ScreenWest
- WA Museum
Minister for Health

Health:
- Alcohol and Drug Authority
- Animal Resources Authority
- Ashburton Health Service
- Avon Health Service
- Beverley District Health Board
- Boddington District Health Board
- Brookton Health Service
- Bruce Rock Memorial Hospital Board
- Bunbury Health Service
- Central Great Southern Health Service Board
- Collie Health Service
- Corrigin District Hospital Board
- Cunderdin District Hospital Board
- Dongara Eneabba Mingenew Health Service Board
- Donnybrook/Balingup Health Service
- Dundas Health Service
- Esperance Health Service
- Gascoyne Health Service
- Geraldton Health Service
- Gnowangerup District Hospital Board
- Harvey Yarloop Health Service Board
- Kalgoorlie-Boulder Health Service
- Katanning Health Service
- Kellerberrin Health Services Board of Management
- Kojonup District Hospital Board
- Kununoppin and Districts Health Service
- Laverton and Leonora Health Service
- Lower Great Southern Health Service Board
- Merredin Health Service
- Metropolitan Health Services Board
- Morawa and Districts Health Service
- Mukinbudin Health Service
- Mullewa Health Services Board of Management
- Murchison Health Service
- Narembeen Health Services Board
- North Midlands Health Service
- Northampton/Kalbarri Health Services
- Nurses Board of Western Australia
- Pathcentre
- Physiotherapists Registration Board
- Podiatrists Registration Board
- Psychologists Board
- Osteopaths Registration Board
- Quadriplegic Centre Board
- Quairading District Hospital Board
- Queen Elizabeth II Medical Centre Trust
- Ravensthorpe Health Service
- Southern Cross District Health Service
- Tambellup Hospital Board
- Upper Great Southern Health Service
- Vasse Leeuwin Health Board
- Warren Blackwood Health Service Board
- WA Centre for Pathology and Medical Research
- WA Health Promotion Foundation
- Wellington Health Service Board
- Western Health Service
- Wyalkatchem-Koorda and Districts Hospital Board
- Yalgoo Health Services

**Minister for Racing and Gaming; Government Enterprises; Goldfields-Esperance**

Racing and Gaming:
- Betting Control Board
- Burswood Park Board
- Gaming Commission of WA
- Racecourse Development Trust
- Totalisator Agency Board
- WA Greyhound Racing Authority

Government Enterprises:
- Bunbury Water Board
- Busselton Water Board
- Gold Corporation (NOT TO BE REVIEWED)
- Government Employees Superannuation Board
- Insurance Commission of WA
- Lotteries Commission
- Water Corporation (NOT TO BE REVIEWED)
ATTACHMENT 2

REVIEW OF STATUTORY AUTHORITIES

Purpose

In its policy statement *Delivering a Better Government*, the Government gave a commitment to rebuilding and maintaining a strong State public sector, and stated its expectation that the public sector would be an effective, efficient and strategically focused platform for the implementation of Government policy. The Government further indicated that it considered the large number of departments and statutory authorities to be a barrier to effective coordination, priority setting and the development and implementation of cross agency or whole-of-government initiatives.

Accordingly, a significant impetus for change arises from the Government’s strong commitment to greater integration and cohesiveness of policy coordination.

The Report of the Taskforce Established to Review the Machinery of Western Australia’s Government “Government Structures for Better Results” (June 2001) noted that there has been a significant growth in the number of statutory authorities in Western Australia that are either under the direction and control of a Minister and/or resourced by the State, from 131 in 1993 to 165 in June 2001. To check the continued growth in the number of statutory authorities within the State’s public sector, the Taskforce recommended more stringent scrutiny of proposals to establish new statutory authorities.

Recommendation 8 of the Machinery of Government (MOG) Taskforce Report states:

- A statutory authority should be established only if its proposed functions cannot be performed by a department or it would be inappropriate for them to be performed by a department.

The Taskforce also went on to recommend that:

- The functions of each statutory authority in the Western Australian public sector should be reviewed before 1 July 2002 to assess the appropriateness and feasibility of incorporating those functions into departments of State. This review should be coordinated by the Department of the Premier and Cabinet. (Recommendation 9)

These recommendations were endorsed by the Government on 18 June, 2001.

In light of Recommendation 8, it is proposed that the review of statutory authorities should adopt as its basic premise the view that the functions of current statutory authorities ought to be incorporated into departments unless there are compelling reasons why this should not be so.
General Principles and Review Criteria

The following general principles will apply:

1. A reduction in the number of statutory authorities and an improvement in the transparency of government are objectives of the machinery of government reform process. The review of statutory authorities must proceed from the basis that a statutory authority should only exist if its functions cannot be performed by a department or it would be inappropriate for them to be performed by a department.

2. It is difficult to be prescriptive when considering whether or not the statutory authority form is required, as agencies will lie somewhere along a continuum between the departmental form and the unambiguous statutory authority. There are really very few impediments to the use of a department to perform the activities of statutory authorities. However, the following are the sorts of issues that ought to be considered in each case:

Contestability

A statutory authority may be the preferred model where an organisation’s functions are solely or principally commercial, that is, they operate in a competitive market. Statutory authorities that could be retained under this criterion would be the existing corporatised/commercialised agencies:

- Electricity Corporation
- Water Corporation
- Gold Corporation
- Port Authorities

There is a separate machinery of government recommendation relating to umbrella state owned enterprises legislation. That will be the subject of separate consideration.

Regulatory Role and/or Independence

The avoidance of real or perceived conflicts of interest may be sufficient justification for the retention of a statutory authority. In other words, a statutory authority’s functions must be at arms length from departmental control or direction, and must be seen to exercise their functions or powers independent of Ministers and the Government. This may be because the Government may itself be bound by decisions of the authority or because it is important to signal publicly that a function is carried out free of political interference.
Examples would be the Anti-Corruption Commission, the Police Service, the Workers Compensation and Rehabilitation Commission and independent or regulatory bodies concerned with social or environmental matters, such as the Environmental Protection Authority. In particular, a review of the Police Service is not considered to be a requirement of this machinery of government recommendation.

Moreover, in relation to conflicts of interest, it may not be appropriate for an agency to be a service provider and a regulator of its competitors (eg the Department of Education vis a vis the non-government school system). However, the potential for conflict of interest may still be able to be managed within a department structure (eg public and private prisons within the Department of Justice).

Among these types of agencies, exceptions to the statutory authority model would be those positions established by statute to carry out regulatory functions, for example, the Director of Public Prosecutions, Commissioner for Public Sector Standards, etc. As recommended by the Taskforce, these are to be supported by an Administrative Office, subject to amendment of the Public Sector Management Act 1994.

**External Funding**

There are instances where an agency is funded by, for example, an industry, for purposes associated with that particular source of funds. This may dictate the use of a statutory authority to “ring-fence” the funds and provide for stakeholder-determination in their use according to the objects of the particular statute. Examples of this include WorkCover and agricultural marketing bodies.

**Special Circumstances**

The government may from time to time determine that it is in the public interest to establish or retain a statutory authority to perform certain functions.

3. Considerations that, of themselves, do not justify the retention of the statutory authority form include:

   - Accessing local or regional input into management and resource allocation decisions would appear to be a weak justification for the retention of statutory authorities that have a narrowly defined regional focus. This can be achieved through the use of advisory committees or boards (and perhaps regional divisions) within a departmental structure.
Similarly, it may not be appropriate to use statutory authorities with special interest representation on boards of management as a means of acquiring input from these interest groups on decisions by Government. Advisory committees or boards can be used in a departmental context instead.

- The view that an agency’s functions require a calibre or skill set of expertise that cannot be sourced from within the public sector is somewhat tenuous too. This expertise can be acquired either through the use of advisory committees or boards or professional sources.

- It may be suggested that a stand-alone authority offers greater transparency of public finances. However, this can be achieved within a departmental structure by separate identification in departmental accounts.

- Also, there is a need to carefully analyse assertions that statutory authority status is needed to enable an organisation to own land, borrow money or enter into contracts. There are alternative mechanisms to achieve the same ends.

Where special circumstances are believed to exist, consideration should be given to whether these functions or powers can be vested in or merged with another, existing statutory authority.

4. Given other government action or their statutory commerciality, the following agencies only are not required to undertake a formal review:

- Western Power
- Forest Products Commission (to be reviewed in 2005)
- Water Corporation
- Gold Corporation
- Port authorities

In addition, it is recommended that the Police Service not be reviewed under this process.

It is also noted that the Minister for Training, announced a review of the training sector on 22 August 2001. The terms of reference for the Review are to consider and report to the Minister by 31 October 2001 on the optimum structure for the TAFE College network, the role and responsibilities of the Department of Training in providing services to the Colleges and significant system wide issues which impact on the public training delivery structure. The relatively short timeframe for the Review will allow any recommendations to be implemented for the 2002 academic year.

Reviews are also under way in relation to regional hospital boards (as part of the health administration review process).
Process

The following process is designed to give each Minister control over reviews in their portfolio.

Steps:

1. Cabinet to agree principles and process.

2. Ministers determine an order of priority for review and submit a timetable that will allow completion of all reviews by 1 July 2002, with consequential legislation to be introduced as early as legislation priorities allow.

3. At this stage an indication of the Minister’s preferred mode of review, which may vary with particular agencies in the portfolio, should be discussed and agreed. Preference should be given to utilising existing resources within the public sector rather than engaging consultants to conduct the reviews. Reviews should preferably be undertaken within the portfolio, but outside the statutory authority that is the subject of the review. Also, at this point existing sunset and review clauses will be identified in order to ensure that multiple overlapping processes do not occur.

4. A consolidated schedule of reviews by portfolios will be presented to Cabinet for noting.

5. Persons appointed to conduct reviews are required to make immediate contact for guidance and to agree arrangements for periodic monitoring with:

   James Thom
   Public Sector Management Division
   Department of the Premier and Cabinet
   Telephone: 9222 8713

6. As mentioned earlier, it is proposed that the reviews should adopt the view that the functions of current statutory authorities ought to be incorporated into departments unless there are compelling reasons why this should not be so.

   To this end, each authority’s statute should be examined to determine whether its objects are still relevant to present circumstances, for instance, community expectations and Government desired outcomes.
Objective justification against agreed principles and criteria will be required for each statutory authority. A comparison should be made between the statutory authority and a departmental model that would achieve the same outcomes (where these outcomes should include accountability, flexibility of resource allocation in accordance with changing government priorities, optimal efficiency and effectiveness, and responsiveness to the needs of customers, as well as those outcomes directly influenced by the statutory authority’s outputs). Assistance in framing the model may be obtained from the Department of the Premier and Cabinet and the Department of Treasury and Finance.

7. In all cases where the review recommends the retention of a statutory authority the review should identify how the authority’s performance, efficiency and effectiveness can be improved. The review should also ensure that an appropriate review or sunset clause is inserted in the statute.

8. A draft review report should be provided to the Department of the Premier and Cabinet for scrutiny before the final report is signed off.

The Department of the Premier and Cabinet will liaise with Treasury and Finance and with the Minister for Public Sector Management.

9. Each final report will be sent to Cabinet for endorsement before implementation.

Roles and Responsibilities

Premier/Minister for Public Sector Management
In his capacity as Minister for Public Sector Management, the Premier has formal responsibility under Section 10 of the Public Sector Management Act 1994, to promote the overall effectiveness and efficiency of the Public Sector and to advise other Ministers of the Crown on (i) structural changes, (ii) programs for management improvement, and (iii) policies, practices and procedures relating to any aspect of management.

Cabinet
Cabinet having endorsed the Report of the Machinery of Government Taskforce, will be the forum for general oversight of implementation of Taskforce recommendations. It will receive a progress report at 6 weekly intervals that will include the status of reviews of statutory authorities.

Ministers
Primary responsibility for implementing machinery of Government reforms rests with the portfolio Minister and the relevant Director General.
Ministers should recognise that they will be the primary point of control and management of boards of statutory authorities within their portfolios. The Minister for Local Government and Regional Development will need to involve Ministers with regional responsibilities in the review of regional development commissions.

Departments of State
Each Minister will determine the extent of involvement by the portfolio department(s) in reviews of statutory authorities in their portfolio.

Statutory Authorities
The extent of involvement in the review process of the statutory authority under review will be decided by the portfolio Minister. In some cases, it may be appropriate for the Minister to ask an authority to conduct an initial review itself. In other cases the Minister may choose to employ the portfolio department or an external body.

Ministers must be aware of the potential for self-interested behaviour if a statutory authority conducts or manages its own review. Ministers should also avoid use of expensive consultancies and external reviewers where these skills are available within the public sector.

Department of Treasury and Finance
Treasury and Finance will provide advice on financial accountability, governance, contestability and financial resource management.

Department of the Premier and Cabinet
The Department of the Premier and Cabinet has been charged with responsibility for coordinating the implementation of machinery of Government reforms. The Department’s role is not itself to conduct reviews of statutory authorities, but to provide support to those who are conducting them.

The Department will also monitor adherence to agreed principles.

The Department will report progress against the review timetable to Cabinet at regular intervals as part of its reporting on overall implementation of the Taskforce recommendations.