

REVIEW OF THE STATUTORY AUTHORITIES

*Established by the Conservation and
Land Management Act 1984*



Prepared by Alex Errington for
the Minister for the Environment and Heritage

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On 12 December 2002 the Minister for the Environment and Heritage, Dr Judy Edwards MLA, announced a review of the three statutory authorities established under the *Conservation and Land Management 1984* and appointed Mr Alex Errington to carry out the review. The requirement for a review of the Marine Parks and Reserves Authority, Marine Parks and Reserves Scientific Advisory Committee and the Conservation Commission of Western Australia arises from statutory and Government policy commitments including the Machinery of Government review. Mr Errington had a career spanning 44 years in the Western Australian Public Service including appointments with the former Department of Fisheries and Wildlife and the Department of Conservation and Land Management. He retired in November 2002 after 10 years as Deputy State Ombudsman.

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Executive Summary

In June 2001 the Premier announced a radical overhaul of State Public Sector. The changes involved a halving of the number of departments of State and the abolition or amalgamation of many statutory and non-statutory bodies.

This initiative followed the Government's endorsement of a report prepared by a taskforce which had been established to review *"the machinery of Western Australia's Government"*.

In addition to making various recommendations concerning a number of specific statutory authorities, the Taskforce recommended that the functions of all other statutory authorities be reviewed *"to assess the appropriateness and feasibility of incorporating those functions into departments of State"*.

This report reviews the functions of three statutory bodies established under the *Conservation and Land Management Act 1984*, those being the Conservation Commission of Western Australia, the Marine Parks and Reserves Authority and the Marine Parks and Reserves Scientific Advisory Committee.

In the case of the Marine Parks and Reserves Authority, Section 26E of the *Conservation and Land Management Act* also requires a review of its operations and effectiveness as soon as practicable after 28 August 2002.

Forty organizations or individuals were involved in the review, either by means of interviews or written submissions.

The main conclusion from the review was that although the Marine Parks and Reserves Scientific Advisory Committee should be abolished as a statutory body, there are *"compelling reasons"* which justify the retention of the Conservation Commission of Western Australia and the Marine Parks and Reserves Authority as separate *"Commissions"*.

The report also highlights the most significant problem identified during the review: - the lack of progress in creating a State-wide system of marine conservation reserves. Other issues raised during the review which invite consideration are also discussed.

Recommendations

1. The Conservation Commission of Western Australia and the Marine Parks and Reserves Authority neither be abolished, nor amalgamated, but be retained as separate community-based vested advisory bodies.
2. The Marine Parks and Reserves Scientific Advisory Committee be abolished as a statutory body.
3. To provide an enhanced service to the Commission and the Authority, existing servicing staff be formed into a single "Commissions Secretariat" unit within the Department of Conservation and Land Management.
4. CALM, the Commission and the Authority enter into a common Memorandum of Understanding which clearly spells out the role of each party and identifies the specific assistance CALM will provide to the Commission and the Authority to enable them to perform their functions. The MOU be endorsed by the Minister.
5. A workshop be held to review the existing marine reserves program, to identify problems, to develop solutions and to make recommendations for Government consideration.
6. Consideration be given to amending the *Conservation and Land Management Act*, as outlined in Section 6 of this report.

1. Background to the review

1.1 The reasons for the review

In March 2001 the Machinery of Government Taskforce commenced a review of the departments, statutory authorities, boards and committees in the Western Australian public sector. In its report of June 2001 the Taskforce recommended a package of proposals designed to enhance the operation of the machinery of government in this State. In the Executive Summary to its report the Taskforce stated that it had *"found that the number of statutory authorities in Western Australia is excessive. Statutory authorities are inflexible, cumbersome and unresponsive to changing administrative needs. The greater independence of statutory authorities from Governments can also compromise appropriate accountability."* Consequently, the Taskforce made the following recommendations concerning statutory authorities:

"RECOMMENDATION 8: 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."

RECOMMENDATION 9: 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. The review should be coordinated by the Department of the Premier and Cabinet."

The Taskforce also made specific mention of the need to review the Marine Parks and Reserves Authority and the Marine Parks and Reserves Scientific Advisory Committee.

Following Cabinet's endorsement of the report of the Taskforce, the Government produced a document which outlined the principles and processes which were to be applied to reviews of statutory authorities. That document is attached as Appendix 1.

The three statutory authorities which are the subject of this report are the Conservation Commission of Western Australia (the Conservation Commission), the Marine Parks and Reserves Authority (the Marine Authority) and the Marine Parks and Reserves Scientific Advisory Committee (the Marine Committee) each created under Part III of the *Conservation and Land Management Act 1984*.

In addition to the review requirements flowing from the Machinery of Government Report, Section 26E of the *Conservation and Land Management Act* requires the Minister for the Environment to carry out a review of the operations and effectiveness of the Marine Authority as soon as practicable after the expiration of five years after its coming into being – that is, five years after 29 August 1997 – having regard to the need for continuation of the Authority and such other matters as appear to the Minister to be relevant.

Section 26AC of the *Conservation and Land Management Act* contains a similar review requirement in respect of the Conservation Commission, but that statutory review is not due until five years after 16 November 2000 – that is, 16 November 2005.

There is no statutory review requirement in respect of the Marine Committee.

It is also relevant that in its February 2001 election policy on the Environment the Government undertook to carry out an independent review of the effectiveness of the Marine Authority.

It is within the above framework that this review has been undertaken.

1.2 Terms of reference for the review

The terms of reference for the review are contained in Section 3 of the attached supporting document (Appendix 2), but for convenience they are reproduced below:

"The terms of reference for the review are:

1. To review the Marine Parks and Reserves Authority, Marine Parks and Reserves Scientific Advisory Committee, and the Conservation Commission of Western Australia having particular regard to:
 - 1.1 each statutory authority's functions generally;
 - 1.2 the appropriateness and feasibility of incorporating each statutory authority's functions into the Department of Conservation and Land Management.
2. To review the operations and effectiveness of the Marine Parks and Reserves Authority having particular regard to:
 - 2.1 The Authority's functions generally, and specifically in relation to the establishment, planning and management of a comprehensive marine conservation reserve system in Western Australian waters;
 - 2.2 the appropriateness of the relevant provisions of the Conservation and Land Management Act 1984 that the Authority operates under, and related legislation that affects the operations of the Authority, and the provision of advice on any amendments that may be desirable, including in respect of the independence of the Authority;
 - 2.3 the Authority's relationship to and performance in liaising with relevant Government agencies and stakeholders;
 - 2.4 the relationship of the Authority to the Marine Parks and Reserves Scientific Advisory Committee;
 - 2.5 any other relevant matters.
3. To review the operations and effectiveness of the Marine Parks and Reserves Scientific Advisory Committee having particular regard to:
 - 3.1 the Committee's functions generally;
 - 3.2 the relationship of the Committee to the Marine Parks and Reserves Authority;
 - 3.3 the need for continuation of the Committee.
4. To advise on the appropriateness, feasibility and desirability of amalgating the Conservation Commission and the Marine Parks and Reserves Authority.
5. To report to the Minister for the Environment and Heritage and make recommendations in relation to each of the foregoing terms of reference and any

additional term(s) of reference as amended or added by the Minister during the course of the review."

1.3 Methodology

The scoping document (at Appendix 2) required consultation with at least eighteen agencies authorities and organizations known to have an interest in one or more of the three bodies under review. I wrote to those interested groups on 11 December 2002 and invited them to make a written submission to the review. I followed this up by contacting all of those organizations by telephone and offering to meet with appropriate representatives to discuss the review and to listen to any views they might have. Almost all of these organizations wished to meet me and, in my view, very fruitful discussions were held. In addition, in the course of that phase of the review I had meetings or telephone discussions with another twenty-four organizations or individuals whose interests came to my attention. This included representatives of indigenous interests who had inadvertently been omitted from the initial list.

Advertisements inviting written submissions to the review were published in *"The West Australian"* newspaper on 11 and 14 December 2002 and the Minister for the Environment issued a media release on 12 December 2002 announcing the review and inviting written submissions from the community.

Prior to commencing my discussions with interested parties and during the course of my enquires I examined a range of material including Parliamentary debates recorded in Hansard, numerous annual reports, other relevant government reports and publications, relevant legislation, government policies, Ministerial media releases and relevant websites on the Internet.

During the course of the review I also attended the December 2002 meeting of the Marine Authority and a workshop arranged by the Conservation Commission, held on 15 January 2003.

In response to my invitation to stakeholders, the Minister's media release and the newspaper advertisements, I received twenty written submissions, which I have carefully considered. The organizations and individuals that made written submissions are listed in Appendix 3.

2. The statutory authorities subject to review

2.1 The Conservation Commission of Western Australia

The Conservation Commission came into existence on 16 November 2000 with the proclamation of the *Conservation and Land Management Amendment Act 2000*. Effectively, it replaced two previous statutory authorities which had existed since 1985, these being the National Parks and Nature Conservation Authority and the Lands and Forest Commission. In introducing the enabling legislation, the then Minister for the Environment described the Commission as the *"pre-eminent ministerial advisory and policy-development body (which) will act as the vesting body for all terrestrial conservation areas, including State forests and native timber reserves"*. She also made particular mention of the Commission's role of advising on ecologically sustainable land and forest management and on monitoring and auditing the land management practices on land vested in it.

The Commission comprises nine members appointed by the Governor on the nomination of the Minister. Members must be persons who – in the opinion of the Minister – have particular knowledge and experience in areas relevant to the functions of the Commission and who are able to make a contribution to the functions of the Commission.

The provisions relating to the establishment, functions and powers of the Commission are contained in Sections 18 to 26AC of the *Conservation and Land Management Act 1984*. As mentioned above, Section 26AC of the Act requires a statutory review of the Commission as soon as practicable after 16 November 2005.

2.2 The Marine Parks and Reserves Authority

The Marine Authority came into existence on 29 August 1997 with the proclamation of the *Acts Amendments (Marine Reserves) Act 1997*. Prior to that time the State's marine conservation reserves were vested in the National Parks and Nature Conservation Authority. In introducing the legislation, the then Minister for Finance (representing the Minister for the Environment in the Legislative Council) said it was *"the Government's view that marine conservation reserves are deserving of, and should receive, more specialised management. This warrants a separate vesting authority for these reserves, with members having skills particularly applicable to marine management and conservation"*.

He went on to announce that *"A new vesting and ministerial advisory body for marine conservation reserves to be known as the Marine Parks and Reserves Authority will be established which will not only provide a focal point for community interest in the management and protection of marine conservation reserves and the marine organisms and habitats that they contain, but also provide the necessary oversight of the management of the multiple uses and benefits which we all expect to be available to us in the marine environment"*.

The Authority comprises seven members appointed by the Governor on the nomination of the Minister. Members must be persons who – in the opinion of the Minister – have particular knowledge and experience in areas relevant to the functions of the Authority.

The provisions relating to the establishment, functions and powers of the Authority are contained in Sections 26A to 26E of the *Conservation and Land Management Act 1984*. As mentioned above, Section 26E of the Act requires a statutory review of the Authority as soon as practicable after 28 August 2002.

2.3 The Marine Parks and Reserves Scientific Advisory Committee

The Committee came into existence on 29 August 1997 with the proclamation of the *Acts Amendments (Marine Reserves) Act 1997*. The Committee can comprise up to seven members appointed by the Minister. The role of the Committee is to provide scientific advice about marine conservation issues to the Minister – where the Minister has sought that advice – and to the Marine Authority.

The provisions relating to the establishment and functions of the Committee are contained in Sections 26F to 26H of the *Conservation and Land Management Act 1984*. As mentioned above, there is no statutory review requirement in respect of the Committee.

3. The major issues

3.1 Abolish, retain or amalgamate the statutory authorities?

A basic premise of the Machinery of Government Taskforce Report was that the functions of existing statutory authorities ought to be incorporated into departments unless there are compelling reasons why this should not be so in a particular case.

In my view, the three statutory authorities under review **could** be abolished and their functions performed by a department (or departments) of State. If the Government was committed to reducing the number of statutory authorities to the absolute minimum, **abolition is possible**. However, in my view, there are "compelling" reasons which should be taken into account in respect of the Conservation Commission and the Marine Authority.

Western Australia has a long history of having the conservation estate vested in community-based statutory bodies. Prior to 1985, national parks were vested in the National Parks Authority, and nature reserves were vested in the Western Australian Wildlife Authority, both being community-based statutory bodies. The *Conservation and Land Management Act 1984* continued – and in fact expanded – that approach in establishing the National Parks and Nature Conservation Authority and the Lands and Forest Commission, which were superseded by the Conservation Commission in 2000. As a result of the consultation process and the written submissions I received from the various interest groups, it is clear that there is widespread community support for continuing the practice of vesting the State's conservation estate in community-based statutory bodies. There is no doubt that the practice helps to establish, convey and re-inforce that the State's conservation estate belongs to the community. Politically it would be a very difficult task to "sell" a proposal to abolish the existing community-based bodies and vest the conservation estate in CALM. Even if the monitoring/auditing function was placed with the EPA/Department of Environmental Protection, abolition of either the Conservation Commission or the Marine Authority would be a very unpopular action.

Apart from the general support for the concept of community-based vested bodies, it has also been put to me that such bodies can provide the Minister with a valuable source of informed independent advice which might not be available through the Department. They can also act as a "buffer" between the Minister and the community in a range of situations.

The above factors do not apply in the case of the Marine Committee. Although the Committee was active in the first two years of its life, it has not met as a committee since June 1999, which of itself casts doubt on the need for it in its present form. I found little support for the Committee to remain as a statutory body.

I have noted that the Schedule to the *Conservation and Land Management Act* provides that:

"5A (1) The Marine Authority may from time to time, by resolution, appoint temporary advisory committees of such persons as it thinks fit to advise it on matters relevant to its functions, other than matters which fall within the functions of the Marine Committee".

With a minor "housekeeping" amendment to this provision – that is, by deleting the words "other than matters which fall within the functions of the Marine Committee" – the Marine

Authority could appoint temporary advisory committees to provide it with advice on any matter relevant to its functions. This would satisfy those parties who saw the need for the Marine Authority to obtain specific scientific advice from time to time.

Accepting that there is strong support for the concept of the conservation estate being vested in one or more community-based statutory bodies, the next question is whether the existing two bodies should remain or should they be amalgamated. Again, in my view, they **could** be amalgamated, but there would need to be sound reasons to do this. If it is accepted that there should be at least one community-based vested body, the focus falls on the need for the second one, that is, the Marine Authority.

At the outset of my enquiries I was inclined to the view that the Marine Authority should be absorbed into the Conservation Commission – in this I was particularly influenced by the Machinery of Government Taskforce's report, which specifically mentioned the need for a review of the Authority. However, the more I looked into the issues and weighed-up the views of interested parties expressed during the interviews and in written submissions, I appreciated that – as in most situations – there are at least two sides to most issues.

Prior to 1997, marine reserves were vested in the National Parks and Nature Conservation Authority. However, following the publication of the *Report of the Marine Parks and Reserves Selection Working Group* in 1994 and the subsequent release of the Government's "New Horizons in Marine Management" strategy, the *Conservation and Land Management Act* was amended in 1997 to create the Marine Parks and Reserves Authority. This was done because – as previously quoted – it was "the Government's view that marine conservation reserves were deserving of ... more specialised management".

There is no doubt that the new Marine Authority was far more expert in marine matters than the NPNCA in 1997 and that is still true today in comparison with the Conservation Commission. The Marine Authority has a huge task before it to get established a comprehensive, adequate and representative marine conservation reserve system for the State and is able to devote the whole of its efforts to marine conservation issues. Such a focus would not be possible if its functions were absorbed into a single body.

Even where some interested parties believed that both bodies should – or could – be amalgamated, there was often the feeling that now was not the appropriate time for this to happen. Not only was the huge task facing the Marine Authority acknowledged, it was also obvious that since the Conservation Commission was established in November 2000 it has been preoccupied with forest issues and the production of a new Forest Management Plan. To make significant changes to the Conservation Commission's functions, responsibilities or membership at this time could be counterproductive.

In my view, at present there are compelling reasons to retain both community-based vested bodies.

That is not to say that this should always be the case. I can foresee that in the future when the Conservation Commission has a new forest management plan in place for the next ten years and the Marine Authority has made significant progress with the creation of the State's system of marine conservation reserves, amalgamation of both bodies could be appropriate. This would reflect the fact that the State's conservation estate is the combination of both the terrestrial and marine reserve systems, that integrated management is important and that there are many areas where common policies and practices are highly desirable – for example, management planning, indigenous joint management, monitoring

and auditing. The five-year review of the Conservation Commission is due in less than three years time and the question of amalgamation should obviously be looked at again at that time. However, at this stage I expect that even then would be too soon to amalgamate both bodies.

RECOMMENDATION 1. The Conservation Commission and the Marine Authority neither be abolished, nor amalgamated, but be retained as separate community-based vested advisory bodies.

RECOMMENDATION 2. The Marine Parks and Reserves Scientific Advisory Committee be abolished as a statutory body.

Although having come to the above view and having made the above recommendations, I feel I should comment on the Conservation Council's submission which makes a case for the amalgamation of both bodies into *"an appropriately constituted and suitably resourced Biodiversity Commission"*. The Council has foreshadowed that it would be putting in a similar submission in response to the recently-released Consultation Paper entitled *"A Biodiversity Conservation Act for Western Australia."* The Council puts an interesting case, but for the reasons I have advanced above, I do not believe that now is the time to amalgamate the Conservation Commission and the Marine Authority. There may of course be some thought given to changing the name of the Conservation Commission when public submissions to the Consultation Paper are being reviewed, as the similarity of the names of the Conservation Commission and the Conservation Council is confusing, as is the acronym "CCWA", which is used for both bodies.

3.2 Functions generally

In approaching this issue, it has to be borne in mind that government bodies are created for the purpose of undertaking government business – essentially by supporting the relevant Minister, administering legislation, implementing government policy and delivering services consistent with that policy. Following the Machinery of Government review the Government adopted the policy that it will conduct its business principally through a reduced number of departments of State. In the context of this review, the relevant department is CALM. The Taskforce report identified three other types of government organizations which have a role to play in the structure of government – "Administrative Officers", "Commissions" and "Statutory Authorities". Concerning "Commissions" the report said:-

"Statutory functions and powers are sometimes assigned to multi-person entities which are intended to operate with a degree of autonomy, but without also undertaking the complete range of government responsibilities normally associated with fully independent statutory authorities."

Such entities are often established to perform regulatory, review, appeal, or advisory functions – or some combination of these – and are therefore appropriately placed outside the formal structure of a department of State....

The Taskforce considers that, as currently occurs, Commissions should continue to be provided with administrative and corporate support services by the relevant departments of State in their portfolio".

The Conservation Commission and the Marine Authority were identified as "Commissions" in the report. (The EPA and the Swan River Trust are other examples of "Commissions" within the Environment and Heritage Portfolio).

The report made it clear that it considered departments to be *"the major institutional component of the generic portfolio structure"* and went on to recommend that *"Departments should not be associated with a statutory board of management, but may provide support to advisory or regulatory boards or committees (whether or not these are established under statute)."* (Recommendation 3 of the report).

Within this context, I consider that the general functions of the Conservation Commission and the Marine Authority are appropriate. Neither body has a "management" role - management is the responsibility of CALM. However, both bodies have the important tasks of providing independent, expert advice to the Minister, having the State's conservation estate vested in them and monitoring/auditing CALM's implementation of management plans for the conservation estate.

In the circumstances, the working relationships between both bodies and CALM and between themselves is critically important. I will deal with that issue further in Section 3.4.

A particular function I should mention relates to the subject of research. Sections 19(1)(1) and 26B(1)(h) of the *Conservation and Land Management Act* make it a function of the Commission and the Authority to *"cause study or research to be undertaken..."* It has been pointed out to me that neither the Commission nor the Authority have the ability to *"cause"* this to take place. These provisions need to be amended to read either *"to recommend to the Minister that study or research be undertaken"* or *"to promote (or encourage) that study or research be undertaken"*.

I have not included any consideration of the functions of the Marine Committee here, as I have previously recommended that it be abolished as a statutory authority.

3.3 Independence

I have no concerns about the "intellectual" independence of either of the two bodies. Their statutory functions, membership and direct access to the Minister give them that. However, I have had it put to me that both bodies have - or could - become "captive" to CALM because of inadequate resources - either in the form of staffing or funding or both.

I appreciate that both bodies could achieve more if they were to be given additional resources. However, this is an issue which goes beyond this review. Both bodies have direct access to the Minister and are in the position to press for additional resources but they are not alone in their needs. I do not intend to make any recommendation about this matter in isolation of the Government's budget process. Notwithstanding, the lack of resources for both bodies was raised as a significant problem by almost all parties who participated in the review.

The other aspect raised with me relating to independence are the provisions in Sections 24 and 26C of the *Conservation and Land Management Act*, where the Minister is empowered to give directions to both bodies.

I have no concerns about these provisions; the Act requires that the text of any such direction has to be included in the annual report of the relevant body. In my view, this adequately satisfies accountability requirements in this area.

3.4 Relationships

The most critical working relationship affecting both bodies is their relationship with the Minister. I have been assured by the Minister that she is generally satisfied with the advice she is receiving from both bodies and is happy with their performance. In the circumstances, there was no need for me to pursue this aspect any further.

The next most important relationships are with CALM and between themselves.

CALM and the Marine Authority already have a Memorandum of Understanding in which it is stated that the parties "agree to work together in a spirit of close cooperation and mutual goodwill". It spells out the roles of both parties and the assistance - both financial and administrative - which CALM will provide to enable the Authority to perform its functions. There is a close working relationship between CALM and the Marine Authority, but this is not unexpected in view of the particular focus of the Authority's functions and the fact that CALM's Marine Conservation Branch is a specialist branch which has to have a close affinity with the Authority.

It appears to me that the working relationship between the Conservation Commission and CALM is not as healthy as that between the Marine Authority and CALM. That does not appear to be just a difference in structure within CALM, although there is a significant difference compared to the marine area discussed above. Rather, there are a number of factors which together do not assist the situation.

The wording of the *Conservation and Land Management Act* does not help. Part III of the Act - which deals with the establishment, powers and functions of the Commission (and the Marine Authority) - refers to "Controlling bodies". In my view, this is a misleading term and does not accurately describe the role of the Commission or the Authority. Both would be more accurately described as "vested advisory bodies". Of course, this is a sensitive issue. I can appreciate that the Conservation Commission has an important role to play, but, as a "Commission" in the terms of the use of that term in the Machinery of Government review, it is not its role to "manage". It appears to me that some members of the Commission wish to become more "hands-on" than is appropriate. Any "straying" into CALM's area of responsibility should be avoided.

Another area in which confusion could arise concerns the preparation of management plans. Section 54(1) provides that "A controlling body shall be responsible for the preparation of proposed management plans...". However, this is qualified by Section 54(3) which provides that "Proposed management plans... shall be prepared ...by ... the controlling body for that land **through the agency of the Department**" (emphasis added). Although there is a draft "Working Arrangement" document in existence which makes it clear that the preparation of draft management plans is CALM's responsibility - albeit in consultation and with the involvement of the Commission - it would be useful if the wording of the Act was amended to clearly reflect the above position. It has also been suggested to me that CALM's planning staff be transferred to the control of the Commission. I do not believe that this is the intention of the legislation and I do not support this.

A related issue – which I appreciate is also contentious – is the question of administrative support for both the Conservation Commission and the Marine Authority. Up until 2000, staff to service the NPNCA were provided by CALM. When the Marine Authority was created in 1997, the arrangement was that CALM would provide administrative support to the Authority, and that arrangement still exists today. However, when the Conservation Commission was created in 2000 the Commission was given the power to employ its own staff. The situation which now exists is that the Commission has three of its own staff, whereas the Marine Authority is serviced by CALM. There is a clear inconsistency of approach here.

It has been suggested to me that what was done by the previous government in 2000 was the enlightened course of action which should now be extended to the servicing of the Marine Authority. However, that would seem to be quite contrary to a general thrust of the *Machinery of Government* report. I am also mindful of the arrangements entered into by the EPA and the DEP in relation to servicing. In my view it would be more efficient to amalgamate the two service groups into one which would provide an enhanced service to both bodies. The unit should be administratively located within CALM in the form of a "Commissions Secretariat". This could be done without any need to amend the *Conservation and Land Management Act*, as Section 33 (1)(b) and (ba) already places the responsibility on the Department to service both the Commission and the Authority.

RECOMMENDATION 3: To provide an enhanced service to the Commission and the Authority, existing servicing staff be formed into a single "Commissions Secretariat" unit within CALM.

RECOMMENDATION 4: CALM, the Commission and the Authority enter into a common Memorandum of Understanding which clearly spells out the role of each party and identifies the specific assistance CALM will provide to the Commission and the Authority to enable them to perform their functions. The MOU be endorsed by the Minister.

3.5 Marine Conservation Reserves

Item 2.1 of the Terms of Reference requires a review of the operations and effectiveness of the Marine Authority, having particular regard to – "the Authority's functions generally, and specifically in relation to the establishment, planning and management of a comprehensive marine conservation reserve system in Western Australian waters".

Concerning this issue, the scoping document (Appendix 2 – at section 4) states – "The *Conservation and Land Management Act* prescribes a rigorous process of planning and consultation, including a requirement for the Minister for the Environment and Heritage to obtain the concurrence of the Ministers for Fisheries and State Development, in relation to the establishment and zoning of new marine conservation reserves. On the one hand this is seen as a strength in the process, in terms of stakeholder confidence. On the other hand there is a concern that these requirements may have unduly delayed the establishment of new marine conservation reserves (none have been established since 1990). This is relevant to consideration of the effectiveness of the MPRA".

This subject evoked the most discussion and criticism during the review.

Legislative provisions for the declaration of marine reserves for nature conservation and public recreation – equivalent to terrestrial national parks and nature reserves – were introduced in this State in 1985 in the *Conservation and Land Management Act*. Between 1985 and 1990 a total of seven such areas were declared. Most of these areas had previously been identified during the work of the EPA's Conservation Through Reserves Committee. In recognition of the need for a systematic approach to identifying which parts of the State's marine environment should be reserved for conservation, in 1986 the State Government established a working group comprising marine scientists and planning officers representing a range of government agencies and academic and research bodies. The brief for the Working Group was to review the coast as a whole and to identify areas which had particular value for conservation, scientific and public recreation purposes which made them worthy of reservation – thereby improving the representativeness of the State's marine conservation reserve system.

The Working Group's report – *"A Representative Marine Reserve System for Western Australia"* was released in July 1994. After a period of public comment the Government released its marine conservation strategy under the title of *"New Horizons in Marine Management"*. The strategy announced plans to set up a Marine Parks Authority and to establish a comprehensive State-wide system of marine conservation reserves.

The necessary legislation to establish the Authority came into effect on 29 August 1997. The *"New Horizons"* strategy was subsequently up-dated and re-issued. In the foreword to the strategy the then Premier and the then Minister for the Environment stated that *"The Act now provides Western Australia with the mechanisms to create a world class multiple-use marine conservation reserve system"*.

Unfortunately, more than five years have since elapsed and none of the some seventy areas identified by the Working Group as worthy of reservation have been added to the conservation estate. That is not to say that there has not been an enormous amount of work done during that time – because there has – but in terms of new reserves there is nothing to show for all that effort. If the number of new reserves was a measure of the Marine Authority's success, one could only conclude that it has been a failure. In this regard, in its submission to the review the Authority says that *"It is a matter of great distress to the MPRA that, after five years of operation, no new marine reserves have been established in Western Australia"*, but it goes on to add that *"implementation has been frustrated by factors that are not within its capacity to control."*

To illustrate the extent of the lack of progress, the following are the number of "marine protected areas" created within the various States and Territories since 1992:

Victoria	24
New South Wales	11
Commonwealth	8
Queensland	5
Northern Territory	2
South Australia	1
Tasmania	1
Western Australia	Nil

This situation is clearly unsatisfactory and action needs to be taken. A range of suggestions to improve the situation have been put to me, which included:

- The Government should issue a clear direction that it supports the creation of a State-wide system of marine conservation reserves.
- In the light of recent experience here and elsewhere – for example, in Victoria, New South Wales and New Zealand – what is the current thinking concerning marine reserves? Is there a need to re-visit the 1994 Working Group report? Should we be looking at mainly “no-take” reserves or a mixture of “no-take” reserves and multiple-use parks? Is there a need to have the “marine management area” category which was included into the legislation in 1997?
- What can be done to ensure a good working relationship between CALM and the Department of Fisheries.
- Can additional finance and planning resources be provided to speed up the production of indicative management plans?
- Should the requirement to produce indicative management plans be removed as a prerequisite to the declaration of a new marine reserve?
- Alternatively, could indicative management plans be more basic documents rather than the “Rolls Royce” style of plan which take so much effort to produce.
- In light of recent amendments to Section 60 of the *Conservation and Land Management Act* to remove the requirement for the concurrence of the Minister for Forest Products and the Minister for Water Resources in relation to a proposed management plan for State forests, should the requirements for concurrence of the Minister for Fisheries and the Minister for State Development in relation to the creation of new marine reserves be removed from Section 14 of the *Conservation and Land Management Act*?
- It be accepted that one hundred percent community agreement is unlikely to be achieved for any proposal, and for proposals to progress, decisions have to be made concerning what is the best compromise that is possible and the Minister make a decision to proceed.
- Should the EPA have a part to play, and might its involvement in the assessment of proposed new marine reserves assist the process?

Although I might attempt to work through these suggestions and make observations and even make recommendations, I consider this is a most important matter and the outcome requires ownership by all the stakeholders. This could best be achieved by a “workshop” involving all interested parties. It should be chaired by an independent facilitator – maybe from the Department of the Premier and Cabinet – and should address issues which would include the following fundamental topics:

- Is the marine reserves program heading in the right direction?
- What have been the problems in getting new reserves established?
- What needs to be done to improve the process?
- What targets should be set?

The workshop should primarily be an initiative of the Minister for the Environment and Heritage, but support of the Minister for Agriculture, Forestry and Fisheries, the Minister for State Development and the Minister for Planning and Infrastructure would be useful as I expect that outcomes would have an effect on Departments within their portfolios. Support of the Premier would also be both useful and desirable.

RECOMMENDATION 5: A workshop be held to review the existing marine reserves program, to identify problems, to develop solutions and to make recommendations for Government consideration.

4. Other issues raised during the review

As could be expected, there were a number of other issues raised by the more than forty parties which had an interest in one or more of the authorities under review. Some went far beyond the terms of reference. However, I believe I should record the most significant of those issues, as they give an insight into the range of views in the community and some may be worthy of serious consideration by the authorities, relevant departments and the Government.

4.1 The July 2002 Draft Forest Management

A number of respondents whose interest was mainly in forestry and the Conservation Commission were of the view that the July 2002 Draft Plan gave insufficient attention to social and economic impacts. It was put to me that there were shortcomings in the 2000 amendments to the *Conservation and Land Management Act*. Although Section 19(2) now refers to principles of ecologically sustainable forest management involving economic, environmental and social considerations (the triple bottom line), in the view of those respondents this had not been adequately incorporated into the management plan provisions in Sections 54 and 55 of the Act. The Chairman of the Conservation Commission agreed that the present provisions in the Act are not clear enough in this area and indicated to me that there is a need to clarify the position.

4.2 Membership of the Conservation Commission

It was suggested to me that although the Commission now has important responsibilities relating to State forests it lacked members with practical forestry and land management (particularly fire management) experience. It was suggested that this perceived shortcoming should be addressed by the Minister as soon as vacancies arise on the Commission.

4.3 Plantation timber production

It was suggested to me that it was inappropriate for the Conservation Commission to be involved in the policy, planning and production of plantation timber. Although there were acknowledged problems where exotic species had been planted on State forest, it was suggested that this is an area where further thought needs to be given.

4.4 The monitoring and auditing function

Sections 19(1)(g) and 26B(f) of the *Conservation and Land Management Act* require the Conservation Commission and the Marine Authority to monitor and audit CALM's performance in relation to management plans for vested land and waters. It has been suggested to me that the Commission be empowered to monitor and audit CALM's activities when managing vested land not yet subject to a management plan.

4.5 Collaboration between the Commission and the Authority

Although Sections 19(9) and 26B(7) require liaison between the two bodies, it has been suggested to me that there is a need for greater collaboration between them. The particular circumstance raised with me is where marine reserves abut terrestrial conservation reserves and the need to have integrated management plans and management of these contiguous areas.

4.6 The working relationship between CALM and the Department of Fisheries

I made passing reference to this issue in Section 3.5 in relation to the marine reserve system.

This issue came up during a number of the interviews I had with interested parties and there was a widespread perception that there was some "tension" between CALM and the Department of Fisheries (or between the Department of Fisheries and CALM – whichever way one wished to view it) and that the working relationship between the two Departments was in need of improvement.

Of course it has to be appreciated that although the two Departments operate side-by-side in the marine environment they have different roles and operate under separate pieces of legislation. However, first and foremost they are both State Government agencies responsible for the implementation of Government policy and the management of the marine area for the benefit of the community as a whole. In this regard the Machinery of Government Taskforce's report encouraged greater cooperation between the two Departments, but in no way implying a ceding of CALM's responsibility for the management of the marine conservation reserve system to the Department of Fisheries – refer Appendix 4.

It seems to me that the two respective Ministers – the Minister for the Environment and the Minister for Fisheries – need to give some attention to this area so that Government policy is implemented consistently and efficiently and the best possible outcome is delivered to the Western Australian community.

5. Other current related reviews

There are four other current reviews which have some relevance to this review and need to be borne in mind by the reader of this report, as some of the areas they deal with overlap to varying degrees and may result in changes to the existing framework in which I have undertaken in this review.

5.1 Focus on the future: The Western Australian State Sustainability Strategy

A consultation draft was released by the Premier in September 2002. It addresses the concept of sustainability and contains sections relating to fishing; forests and plantations; and coastal and marine. It refers to the 1994 report of the Marine Parks and Reserves Selection Working Group and the need to continue to implement the recommendations to establish a State-wide system of representative marine reserves. It also proposes that a State Coastal Strategy and a Marine Planning Strategy be developed.

5.2 Report of the Ministerial Taskforce : Review of the structural arrangements for coastal planning and management in Western Australia

This report was presented to the Minister for Planning and Infrastructure in May 2002. It identifies areas of concern within the existing framework for coastal planning and highlights the fact that although the *Conservation and Land Management Act* contains provisions for the planning and creating of marine conservation reserves, there is no legislative framework for integrated planning in the State's marine environment. It recommends that the existing Coastal Zone Council be reconstituted and revitalized and that the Western Australian Planning Commission develop a State Coastal Strategy and a State Marine Planning Strategy. The latter would clearly identify where the proposed system of marine conservation reserves would fit into an overall marine plan.

5.3 A Biodiversity Conservation Act for Western Australia

A consultation paper was released by the Minister for the Environment and Heritage in December 2002, with written submission closing on 5 March 2003. The paper discusses the Government's intention to replace the *Wildlife Conservation Act 1950* with modern biodiversity legislation. One of the areas on which public comment has been invited is the possible roles that the Conservation Commission and the Marine Authority may be given under the proposed Biodiversity Conservation Act.

5.4 Report to the Minister for Agriculture, Forestry and Fisheries by the Integrated Fisheries Management Review Committee

This report was released by the Minister in December 2002. Although the main focus of the report concerns the development of a strategy to integrate the management and

sustainable use of fish resources, it refers to the need for marine conservation measures, an integrated marine planning strategy for the State and the possible amalgamation of Government services across marine areas, which was flagged in the Machinery of Government Report and the Government fisheries policy (see Section 4.6 above).

6. Amendments to the Conservation and Land Management Act

Throughout this report references have been made to various provisions of the *Conservation and Land Management Act*. The following is a check-list of provisions in the Act which will either have to be amended or could require amendment as a result of recommendations made or issues raised for consideration.

Section 13C	In Section 3.5 the question is raised whether there is a need for the "marine management area" category.
Section 14	In Section 3.5 questions are raised about the present process for the creating of marine conservation reserves.
Part III and elsewhere	In Section 3.4 attention is drawn to the use of the term "Controlling bodies". This term is misleading and should be replaced with a term such as "Vested advisory bodies" or "Commissions."
Section 19	In Section 4.4 the question is raised whether the Conservation Commission should be able to monitor and audit CALM's activities on land not yet subject to a management plan.
Section 19(1)(1) and Section 26B(1)(h)	In Section 3.2 it is pointed out that neither the Commission nor the Authority have the ability to "cause" study or research to be undertaken. These provisions need to be amended to read either "to recommend to the Minister that study or research be undertaken" or "to promote (or encourage) that study or research be undertaken".
Section 20(2) etc	In Section 3.4 it is recommended that CALM service the Commission and that a MOU be entered into. This would remove the need for the Commission to employ its own staff. Although the power could be left in the Act, it would be logical to remove it.
Division 3B (Sections 26F-26H)	In Section 3.1 it is recommended that the Marine Committee be abolished as a statutory body.

Section 54(1) and (3)	In Section 3.4 attention is drawn to the confusion caused by the wording of the provisions relating to the preparation of management plans. The existing provisions should be re-drafted to clarify the position.
Section 55	Section 4.1 refers to the need for reference to ecologically sustainable forest management in forest management plans.
Section 56(b)	In Section 4.3 the question is raised whether the Conservation Commission should be involved in the policy, planning or production of plantation timber.
Section 60(2a) and (2b)	In Section 3.5 the question is raised whether concurrence of the Minister for Fisheries and the Minister for State Development should be required before a marine reserve can be created.
Schedule: Clause 5A(1a)	In Section 3.1 it is pointed out that the words <i>"other than matters which fall within the functions of the Marine Committee"</i> will need to be deleted in the event that the Marine Committee is abolished as a statutory body.

RECOMMENDATION 6: Consideration be given to amending the *Conservation and Land Management Act*, as outlined above.

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 focussed 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 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.

**REVIEW OF THE
MARINE PARKS AND RESERVES AUTHORITY
MARINE PARKS AND RESERVES SCIENTIFIC ADVISORY COMMITTEE
CONSERVATION COMMISSION OF WESTERN AUSTRALIA**

1. Background

The requirement for a review of the Marine Parks and Reserves Authority (MPRA), Marine Parks and Reserves Scientific Advisory Committee (MPRSAC) and the Conservation Commission of Western Australia (CCWA) arises from statutory and Government policy commitments including the Machinery of Government (MOG) review.

1.1 Statutory Review Requirements

The CLM Act requires (s.26E) that the Minister shall carry out a review of the operations and effectiveness of the MPRA as soon as is practicable after 29 August 2002 and in the course of that review shall have regard to –

- (a) the need for continuation of the MPRA; and
- (b) such other matters as appear to the Minister to be relevant.

While the CLM Act requires a similar review in respect of the CCWA, that review is not due until after 16 November 2005. There is no statutory requirement for review of the MPRSAC.

1.2 Government Policy Review Requirements

In its February 2001 election policy platform, the Government made a number of relevant commitments:

- under its *Environment* policy to -
undertake an independent review of effectiveness of the Marine Parks and Reserves Authority;
and
amend the Conservation and Land Management Act 1984 to increase the independence of the Marine Parks and Reserves Authority.
- under its *Protecting our old-growth forests* policy to -
review the effectiveness of the newly constituted Forest Products Commission, Conservation Commission and reconstituted Department of Conservation and Land Management.

1.3 Machinery of Government Review Requirements

The Government endorsed the June 2001 MOG Taskforce recommendation that the functions of each statutory authority should be reviewed to assess the appropriateness and feasibility of incorporating those functions into departments of State. Guidelines for these reviews have been developed and are attached as Annex 1.

A single review is to be conducted to meet the above statutory, policy and MOG requirements in respect of the three CLM Act statutory authorities.

2. The Three CLM Act Statutory Authorities

The functions, membership and other provisions pertaining to each of the MPRA, MPRSAC and CCWA are given in the CLM Act.

While the Act should be referred to for a detailed understanding, the MPRA and CCWA have broadly similar functions in a number of respects. Both are vested bodies for conservation reserves (the MPRA in marine and estuarine environments, the CCWA in terrestrial, including freshwater, areas), and they have associated management planning responsibilities and functions in respect of monitoring and auditing performance of the Department of Conservation and Land Management in respect of those management plans. Both bodies have policy advisory functions in relation to vested lands and waters, and on broader biodiversity conservation matters. The CCWA also has specific responsibilities as the vested body for State forest and timber reserves and in respect of the production and harvesting of forest produce, as well as for monitoring and auditing performance of the Department of Conservation and Land Management and the Forest Products Commission in respect of management plans for State forest and timber reserves.

The MPRA was established in August 1997 as a result of amendments to the CLM Act. Those amendments gave effect inter alia to Government policy to establish a separate vested body for marine conservation reserves. Previously marine and terrestrial conservation reserves were vested in the one body (the National Parks and Nature Conservation Authority).

The CCWA was established in November 2000 at the time the CLM Act was amended to separate out from the Department of Conservation and Land Management responsibility for the harvesting and sale of forest products.

Both the MPRA and CCWA have memberships based on the non-representative model, i.e. they are based on relevant knowledge and experience or a relevant function or vocational interest (the one exception is that the CCWA has, by statutory requirement, one member with knowledge and experience in relevant Aboriginal cultural and heritage matters).

The MPRSAC has a scientific advisory function. The Act stipulates that its membership includes senior scientific officers from each of the Department of Conservation and Land Management, Department of Fisheries and WA Museum.

All three statutory authorities receive significant services and support from the Department of Conservation and Land Management. In addition, the CCWA has its own small staff and a specific allocation of funds via the Department's budget appropriation.

3. Terms of Reference for the Review

The terms of reference for the review are:

1. To review the Marine Parks and Reserves Authority, Marine Parks and Reserves Scientific Advisory Committee, and the Conservation Commission of Western Australia having particular regard to:
 - 1.1 each statutory authority's functions generally;
 - 1.2 the appropriateness and feasibility of incorporating each statutory authority's functions into the Department of Conservation and Land Management.
2. To review the operations and effectiveness of the Marine Parks and Reserves Authority having particular regard to:
 - 2.1 the Authority's functions generally, and specifically in relation to the establishment, planning and management of a comprehensive marine conservation reserve system in Western Australian waters;

- 2.2 the appropriateness of the relevant provisions of the Conservation and Land Management Act 1984 that the Authority operates under, and related legislation that affects the operations of the Authority, and the provision of advice on any amendments that may be desirable, including in respect of the independence of the Authority;
 - 2.3 the Authority's relationship to and performance in liaising with relevant Government agencies and stakeholders;
 - 2.4 the relationship of the Authority to the Marine Parks and Reserves Scientific Advisory Committee;
 - 2.5 any other relevant matters.
3. To review the operations and effectiveness of the Marine Parks and Reserves Scientific Advisory Committee having particular regard to:
 - 3.1 the Committee's functions generally;
 - 3.2 the relationship of the Committee to the Marine Parks and Reserves Authority;
 - 3.3 the need for continuation of the Committee.
 4. To advise on the appropriateness, feasibility and desirability of amalgamating the Conservation Commission and the Marine Parks and Reserves Authority.
 5. To report to the Minister for the Environment and Heritage and make recommendations in relation to each of the foregoing terms of reference and any additional term(s) of reference as amended or added by the Minister during the course of the review.

4. Relevant Issues

Some of the issues for the review to take into account are:

- As a matter of Government policy it is considered appropriate that public lands and waters making up the State's system of conservation reserves, State forests and timber reserves should be vested in a body with community membership that advises the Minister for the Environment and monitors and audits the manager of those lands and waters (i.e. the Department of Conservation and Land Management, and the Forest Products Commission in respect of harvesting of forest products from State forest and timber reserves).
- The CCWA has only been in operation since November 2000 and in that time has had the preparation of the next Forest Management Plan as a major focus. It will be subject to a statutory review of its operations and effectiveness after November 2005, and it is considered premature to review its performance at the present time.
- Alternative views have been expressed on the desirability of having separate vested bodies for terrestrial and marine conservation reserves, around issues such as concern that there might be inadequate focus on and expertise in marine matters under a single body, and on the other hand concerns about duplication and overlap across a range of policy, planning and management functions when there are two bodies.
- The CLM Act prescribes a rigorous process of planning and consultation, including a requirement for the Minister for the Environment and Heritage to obtain the concurrence of the Ministers for Fisheries and State Development, in relation to the establishment and zoning of new marine conservation reserves. On the one hand this is seen as a strength in the process, in terms of stakeholder confidence. On the other hand there is a concern that these requirements may have unduly delayed the establishment of new marine conservation reserves (none have been established since 1990). This is relevant to consideration of the effectiveness of the MPRA.

5. Consultation

The reviewer will be required to consult with:

- the Minister for the Environment and Heritage;
- the three CLM Act statutory authorities:
 - Marine Parks and Reserves Authority
 - Marine Parks and Reserves Scientific Advisory Committee
 - Conservation Commission of Western Australia; and
- relevant Government agencies and non-government stakeholders:

Department of Conservation and Land Management
Department of Environment, Water and Catchment Protection
Department of Mineral and Petroleum Resources
WA Museum (in respect of MPRSAC)
Department of Fisheries
Forest Products Commission
Environmental Protection Authority
Conservation Council of WA
Western Australian Fishing Industry Council
Recfishwest
Australian Petroleum Production and Exploration Association
Chamber of Minerals and Energy
Association of Mining and Exploration Companies
Forest Industries Federation of WA

There will be an advertised call for submissions, as well as direct approaches to the agencies, authorities and organisations listed above.

6. Deliverables

The key deliverables are:

- a draft report to the Minister for the Environment and Heritage by 7 March 2003;
- following consultation with the Minister, a final report to the Minister by 31 March 2003.

The report is to include an Executive Summary and consolidated list of recommendations.

7. Project Management

The client for the review is the Minister for the Environment and Heritage. The Minister will be assisted by the Executive Director of the Department of Conservation and Land Management, and the Executive Director's office will provide the support and assistance required by the reviewer.

Appendix 3

Organizations or individuals that made written submissions.

Australian Petroleum Production and Exploration Association Limited
A Briggs
Busselton – Dunsborough Environment Centre
Conservation Commission of Western Australia
Conservation Council of WA (Inc)
Department of Environmental Protection/Water and Rivers Commission
Department of Fisheries
Department of Mineral and Petroleum Resources
P Dick
Forest Products Commission
Institute of Foresters of Australia – WA Division
L Jackes
Marine Parks and Reserves Authority
Minister for Agriculture, Forestry and Fisheries
Recfishwest
The Chamber of Minerals and Energy of Western Australia Inc
P Shedley
D Spriggins
Walpole – Nornalup National Parks Association
World Wide Fund for Nature Australia

Government Structures for Better Results

The Report of the Taskforce Established to Review
the Machinery of Western Australia's Government

June 2001

The Machinery of Government Taskforce

Stuart Hicks (Chairman)

John Langoulant

Ruth Shean

Mal Wauchope

1.1 At-sea Service Delivery

In its pre-election Fisheries Policy, the Government gave a commitment to examine options for achieving greater integration of marine management agencies including Fisheries WA, the Department of Transport and the current Department of Conservation and Land Management. Each of these agencies currently undertakes different but related at-sea activities such as ensuring compliance with fishing rules and bag limits, inspecting boat safety and protecting and managing marine parks.

Each maintains separate vessels and investments in related staff and infrastructure, as does the WA Police Service through its Water Policing operation.

To encourage greater co-ordination and collective efficiency, the Taskforce proposes that the at-sea operations of Fisheries WA and the Department of Transport be integrated into the one unit, managed by Fisheries WA. This will involve the transfer of vessels and related resources from Transport to Fisheries WA, except for those associated with marine safety activities on the Swan River.

The new Department of Conservation and the WA Police Service should cooperate with the amalgamated service as much as possible and use it where advantageous, recognising that both will maintain a marine capability. For the Department of Conservation, this will mean recognising the natural synergies that exist between their at-sea and on-shore conservation activities, but endeavouring to co-operate and eliminate duplication wherever possible. (This arrangement will in no way involve or imply a ceding of responsibility for the management of the marine reserve system to Fisheries WA). For the WA Police Service, this will mean recognising the highly specialised and diverse nature of police work and the need to maintain and operate a separate Water Police capability.

It is intended that this arrangement will see all the parties that undertake any sort of at-sea services being cross-authorised and trained, where practical, to administer the compliance responsibilities of the other stakeholders.

In addition, every effort should be made to rationalise sensibly support infrastructure and facilities, and explore collocation opportunities as appropriate. (This will become critical when considering arrangements or resourcing requirements for any new initiatives). In this respect, the Taskforce recommends that the separate communications centre operated by the Department of Transport should be merged with the 24-hour facility operated by the WA Police Service.

To ensure that the arrangement works as intended, the Taskforce believes that an overarching Memorandum of Understanding should be established between the respective Ministers to guide detailed Service Level Agreements between the agencies.

It is intended that all services provided by Fisheries WA should be in accordance with specifications and standards set by the client agencies and recorded within these Service Level Agreements. The Agreements should also contain a provision for third party auditing of services against defined performance criteria to ensure that Fisheries WA consistently provides the required standard of service.

In addition, the Marine Operations Council which currently operates between the parties should be re-energised to oversee collectively the extended arrangement, assess intended fleet purchases by any party and examine disputes or concerns should they arise. The Council should also include a representative from the Fire and Emergency Services Authority – the body that coordinates the State's volunteer sea rescue groups.

The Taskforce also sees merit in the Marine Operations Council providing periodic feedback to the respective Ministers on the overall arrangement and the extent of the co-operation and efficiencies achieved.

It is important that the Council be actively supported and resourced over time and for this reason it is recommended that it be hosted, supported and chaired by Fisheries WA.

Recommendation 30: An integrated at-sea service delivery operation should be established within Fisheries WA to service its needs and those of the Department of Transport (other than marine safety activities on the Swan River).

General Efficiencies

The Taskforce noted the potential for greater co-operation and efficiency between the Agriculture, Fisheries and Forest agencies in respect to joint accommodation and cross-skilling in regional areas. Examples drawn to the attention of the Taskforce included the opportunity to share accommodation and possibly cross-skill certain staff in centres like Albany, Broome and Vasse.

It is anticipated that other areas for resource sharing and co-operation between the three primary agencies may also be available and should be addressed at an administrative level.