National Competition Policy

Report for the 2004 Assessment on Victoria's Implementation of National Competition Policy

March 2004

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Part A: Overview

1. Overview

This 2004 report to the National Competition Council (NCC) details Victoria's ongoing achievements in National Competition Policy (NCP) reform. The report shows that, not only has Victoria taken action to address issues raised by the NCC in its previous assessment, but that it has also made further important gains and met all of its requirements for the 2004 assessment.

As a result the NCC will be able to recommend the removal of the suspension imposed on last year's payments and the full disbursement of Victoria's payments for this year.

Given the final reporting on and assessment of the legislative review program last year, Victoria has been able to limit this year's report to outstanding matters from last year, new issues that have arisen in the intervening period and other legislation reviews about which the NCC has specifically requested further information.[1]

Major achievements

Although Victoria has successfully completed the overwhelming majority of its competition policy obligations, since the last report to the NCC Victoria has reached many important further milestones. Victoria continues to lead all jurisdictions in grasping the benefits of competition policy.

The most significant actions have been in the areas of water, the finalisation of a number of outstanding priority legislation review and reform processes and completion of other legislation tasks.

Significantly, Victoria has taken action on all issues raised by the NCC last year as part of the 'suspension pool'.

Furthermore, where Victorian reforms have been held up by national processes, Victoria has either implemented all appropriate independent action or taken steps to speed up those national reforms that are outside its direct control.

A brief description of the most important reforms is provided below and full details of reform activity is given in the relevant chapters of this report.

[1] The NCC refers to priority legislation and non-priority legislation. The term 'other legislation reviews' is used in this document refer to the NCC's non-priority legislation.

Water

Victoria is in the process of far-reaching reform of the way water is collected, distributed and used in this state. Just as importantly, Victoria has made unprecedented changes to how water is allocated to the environment. In doing so, unparalleled gains have been made for the community and the environment.

Major reforms to the water sector were reported in 2003 and those changes have continued and strengthened in 2004.

Victoria has continued its program of rehabilitation of stressed rivers with important gains to both flows and habitat achieved in 2003.

The Government's Green Paper on water reform was released in 2003 and will be followed by a landmark White Paper in 2004.

On 1 January 2004, the Essential Services Commission became the economic regulator of the entire Victorian water sector. The Commission's role involves regulating the prices and service standards of 24 businesses supplying water, sewerage and related services to residential, industrial and commercial, and irrigation customers throughout the State.

The $320 million Victorian Water Trust was established in 2003 to assist in securing sustainable water supplies for Victoria, and in particular to help address the need for major innovation and new approaches.

Suspension pool

In the last year Victoria has made significant advances in finalising its very few outstanding legislative review commitments.

Professions and occupations

Legislative changes arising from the NCP review of the *Private Agents Act 1966* will be introduced in the Autumn 2004 sitting of Parliament.

The *Surveying Bill 2004* is scheduled for introduction in the Autumn 2004 sitting of Parliament and will give effect to the outstanding recommendations of the NCP review of the *Surveyors Act 1978*. Other recommendations have been implemented without the need for legislative change.

The Government has announced its response to the NCP review of the *Architects Act 1991* and legislative changes will be incorporated into the proposed *Architects and Building Acts (Amendment) Bill 2004*, to be introduced in the Autumn sitting of Parliament

Primary industries

The majority of recommendations arising from the NCP review of the *Fisheries Act 1995* have now been implemented with the passage of amendments to the Act in Spring 2003, including the introduction of full cost recovery for fishery management costs that will commence in April 2004.

The Government also made legislative amendments in Spring 2003 to the *Extractive Industries Development Act 1995* to give effect to the recommendations of the NCP review of that Act.

Transport

The NCC assessed Victoria as being non-compliant with respect to tow truck regulation last year, particularly in regard to the "needs criteria" for entry into the tow truck market. In response Victoria has initiated a major independent review of the needs criteria to determine if it is in the public interest and if there are less restrictive means of meeting the objectives of the Act.

Completion of the reform of port services occurred with the passage of the *Port Services (Port Management Reform) Act 2003*.

Other

Victoria has continued to build on previous progress in reforming gambling legislation and regulations in 2003. Recent progress has included the public release of the Government response to the review of Club Keno legislation. The Government also moved to align its lotteries arrangements with those of NSW so that a more competitive national market may be fostered.

Changes to the *Building Act 1993* have arisen in response to the NCP review of the *Architects Act 1991*. The review also recommended major increases in regulation that the Government considers need to be considered over a longer timeframe.

National reviews

The reform of the national agricultural and veterinary chemicals registration scheme is in the process of implementation by the Commonwealth. Victoria does not require legislative changes to the *Agricultural and Veterinary Chemicals (Victoria) Act 1994* to implement the scheme once the Commonwealth's legislation is implemented.

In relation to the *Agricultural and Veterinary Chemicals (Control of Use) Act 1992*, Victoria has implemented the review recommendations but believes that there are public interest reasons for retaining the requirement for aerial sprayers to hold an approved public liability insurance policy.

Recommendations for reform to the Drugs, Poisons and Controlled Substances Legislation will go to COAG for endorsement in 2004. The Victorian Government has already implemented a number of reforms recommended in the national review.

As the *Legal Practices Act 1996* is to be soon replaced by completely new legislation. The national scheme being developed by the Standing Committee of Attorneys General (SCAG) is to be reviewed at a national level for COAG. Victoria has halted review of the existing Act in favour of commissioning a comprehensive independent NCP review of the proposed legislation. Victoria believes that this is not only more practical but that reviewing the Act prior to implementation will produce a much more beneficial outcome.

Legislative changes arising from NCP reviews of the *Travel Agents Act 1986* will be introduced in the Autumn 2004 sitting of Parliament.

Victoria has completed all of the reforms recommended by the reviews of compulsory third party insurance and workers' compensation.

The Victorian Government has fulfilled its part of the national reform process for Trade Measurement legislation and is currently waiting on the Queensland Government to finalise the necessary processes. The Minister for Consumer Affairs has written to his Queensland counterpart urging a swift resolution of this issue.

Other legislation

Victoria has completed reviews and responses for all of its other legislation with the exception of National Parks legislation where the Government is engaged in further public consultation prior to finalising outcomes. Details are provided in the relevant chapters.

2. Legislation review and COAG guidelines

Information request

The Council requested the following information:

- The formal Regulatory Impact Statement (RIS) process for all legislation.
- Publication of guidelines for conducting a RIS.
- Whether the assessment guidelines specifically reflected the CPA clause 5 guiding principle.
- Whether an independent body assesses RIS.
- The processes to ensure that all agencies are adhering to gatekeeping requirements.

Gatekeeping

Victorian processes ensure compliance with clause 5(5) of the CPA which requires that legislative review principles are taken into account when developing new legislation.

Legislative proposals

In Victoria all legislative proposals are subject to rigorous assessment on economic, social, environmental and competition policy impacts as part of the Cabinet Submission briefing process.

The Cabinet Handbook specifies that all Cabinet Submissions must state whether or not the proposal will restrict competition. If a legislative proposal restricts competition, the Cabinet Handbook requires that the submission should describe the nature of the proposed restriction, along with the details of any NCP review undertaken. Where NCP reviews propose restrictions on competition, the submission must be able to prove an adequate public interest benefit justification for the restrictions. This process ensures that NCP issues are addressed where possible either before or in the Government's decision-making processes.

Guidelines for the preparation of NCP reviews are published by the Department of Premier and Cabinet (National Competition Policy Guidelines for the Review of Legislative Restrictions on Competition, 1996, http://www.dtf.vic.gov.au/ncp/LegRef1.htm).

The Department of Treasury and Finance (DTF) holds responsibility for monitoring NCP compliance within the Victorian Government. DTF provides advice to agencies on legislative NCP issues. DTF assesses all proposals to create or amend legislation against the NCP guiding principles. There were 114 new or amended pieces of legislation passed by the Victorian Parliament in the 2003 calendar year.

Regulatory proposals

The *Subordinate Legislation Act 1994* (SLA) requires the preparation of a Regulatory Impact Statement (RIS) for new or amended regulatory proposals. Exemptions to the requirement to prepare a RIS include:

- proposals will not impose an appreciable economic or social burden on the public; and
- that it is of a fundamentally declaratory or machinery nature.

The RIS process requires an assessment of the competition implications of any proposal consistent with NCP principles. RIS guidelines give detailed instructions on NCP assessment of restrictions on competition including, identification of costs and benefits and alternatives through a consultative process.

Once a RIS has been prepared it must be publicly circulated, with the Minister informing the community of the proposed statutory rules and RIS through the placement of a notice in the Gazette and a daily newspaper which is generally circulated in Victoria.

The SLA requires that RISs be prepared in accordance with the guidelines issued by the Department of Premier and Cabinet (*Subordinate Legislation Act 1994* Guidelines, 1996, http://www.dsd.vic.gov.au/Web/ORR/ORR.nsf/ImageLookup/PDF/$file/Subleg.pdf). The SLA also requires an independent assessment of the RIS to certify the adequacy of the analysis in the RIS. The Office of Regulation Reform (ORR) within the Department of Industry, Innovation and Regional Development can conduct these independent assessments. Alternatively the responsible Minister can engage the services of suitably qualified firms or individuals external to government to provide this advice.

The ORR also provides guidance to departments in the preparation of RISs, including periodically conducting training to departmental officers on the preparation of RISs.

The Scrutiny of Acts and Regulations Committee of Parliament (SARC) examines the compliance with the SLA including the RIS requirement. In instances where a RIS is considered deficient by SARC, it writes to the appropriate Minister seeking a response and rectification of the issues. The ultimate sanction of SARC is that it can move a motion of disallowance for the regulations. This is a measure that is extremely powerful but rarely used.

As at 18 December 2003 SARC had considered 92 regulations since 1 July 2003. Of the 92 regulations considered, 17 contained RISs and the relevant competition policy assessment/analysis and certificate. Only one of the assessments was considered deficient by SARC. In cases where deficiencies are found the relevant Minister is contacted and asked to rectify the deficiency.

Inter-jurisdictional issues.

Victoria takes direction from Ministerial Standing Committees where model legislation is required. Ministerial Standing Committees are subject to the Commonwealth's RIS process.

3. Competitive neutrality

Assessment issues

- Competitive Neutrality (CN) Policy application to Council owned recreational aquatic facilities has been revised and is no longer applied.
- The Competitive Neutrality Unit (CNU) has broaden its activities to strengthen its educational focus in addition to its investigatory role.
- Response to issues raised by the NCC with regard to the application of CN by VicForests.

Competitive neutrality policy

New interpretation for council-owned leisure centres

The CN Policy created inherent difficulties where council-owned leisure centres are unable to charge full cost-reflective pricing in relation to aquatic facilities. The Treasurer approved a change in CN Policy interpretation with regard to council-owned leisure centres in May 2003.

Council-owned leisure centres are multi-purpose facilities that act as community hubs designed to service the specific needs of a broad cross-section of the community. Most leisure centres have aquatic facilities that offer both swim class and recreational swimming components. The swim class component is viewed as a significant business to which CN Policy cost adjustments must be identified. Under the new interpretation the recreational component of the aquatic facility is no longer viewed as a business activity but rather a public amenity or community infrastructure to which CN Policy does not apply.

The CNU has been exploring other difficulties created by the CN Policy and Guide, particularly in relation to the provision of public policy objectives by government entities.

Local government compliance

The Department for Victorian Communities (DVC) Local Government Division, assisted by an advisory panel of representatives from the Department of Treasury and Finance, the Department of Premier and Cabinet and the Municipal Association of Victoria has made recommendations on councils' NCP compliance. The panel assessed councils' NCP statements individually, and sought clarification from any council whose statement was not sufficiently self-explanatory or complete, before settling upon recommendations to enable local councils to receive payments equal to 9 per cent of the State's total NCP payments.

Seventy-four of the 79 Victorian Councils were found to be compliant with CN Policy and eligible for competition policy payments in November 2003. Ten Councils were asked to provide further advice and were subsequently deemed to be compliant. Nine Councils were identified as being in need of either further tuition with regard to competitive neutrality implementation or meeting with the CNU to discuss specific issues. The CNU will make arrangements to meet with suitable representatives from those Councils in 2004.

Victoria's Competitive Neutrality Unit – a new approach

In December 2002, the CNU changed its name from the 'Competitive Neutrality Complaints Unit' to reflect a change in its approach to competitive neutrality application. The CNU recognised a need to broaden its educational focus in addition to its investigatory role. The CNU encourages government entities that require advice regarding application of competitive neutrality to approach it where those entities are uncertain of their obligations and or correct application of the CN Policy.

In 2003, CNU representatives visited 14 separate councils, both regional and metropolitan, to meet with/conduct workshops on specific issues. The objective of visiting councils is to improve council understanding of CN principles and sustain application of CN policy.

In October 2003, the CNU conducted a series of daylong CN Policy workshops addressing local government in one metropolitan and four regional locations. DVC and Municipal Association of Victoria (MAV) participated in presentation and organisation of the program. In order to cover issues of greatest relevance to it, local government was asked to complete a survey prior to the workshops. The program content was based on feedback in response to the survey.

The program was designed to clarify elements of competitive neutrality and encourage interaction and exchange of ideas by participants. A total of 132 local government representatives attended the sessions representing 46 councils out of 79, or 58 per cent. MAV have issued a follow-up survey to assess local government response to the program. The CNU will continue to work with DVC and MAV to achieve sustainable application of Victoria's CN Policy by Local Government.

The CNU has also held meetings with a further 13 government agencies and consultants to discuss policy application to various businesses.

Competitive neutrality complaints

During 2003, the CNU finalised ten CN complaints, completed two follow-up investigations and, as at 28 February 2004, had one investigation in progress. During the year two complaints were withdrawn.

Investigations in progress at December 2002 and completed prior to December 2003

City of Ballarat – childcare facilities

Complaint registered 15 May 2002. Finalised March 2003.

The complaint related to Council operating subsidised long day childcare facilities and paying childcare workers above the Federal Award that other childcare centres pay.

The CNU found that because the City of Ballarat had undertaken a public interest test it complied with the Victorian CN Policy. There is a shortage of childcare facilities within the region. Council has committed to develop stronger municipal wide networks to share relevant information with private childcare providers to help service community needs. Council does not intend to increase its own service provision.

Cemetery trusts

Complaint registered 22 May 2002. Finalised May 2003.

Complaints were lodged against four cemetery trusts: trusts responsible for Bunurong Memorial Park, The Necropolis Springvale, Fawkner Crematorium and Memorial Park and Altona Memorial Park.

The complainant expressed concern about the changing role of cemetery trusts, which they claim has evolved from being a provider of burial services and cemetery maintenance to an aggressive marketer of goods and services, including those traditionally provided by the private sector.

The CNU found that, while complying with competitive neutrality, the formulae and determination of pricing of memorialisation goods and services available through the Trusts was not transparent. A new pricing structure that will ensure transparency is to be introduced following a pricing review undertaken by the Department of Human Services (DHS).

South Gippsland Shire Council - community transport service

Complaint registered 6 November 2002. Finalised January 2003.

The complaint was directed against the South Gippsland Shire Council with regard to the provision of community transport services. The complaint related to the impact on the operation of private taxi services. The community transport service was funded through a Home and Community Care grant from the DHS and administered by the South Gippsland Shire Council.

The CNU concluded that the South Gippsland Shire Council community transport service was not a significant business activity on the basis that it was a not-for-profit service. Consequently the service was outside the scope of the CN Policy.

Melbourne City Council – waste collection service

Complaint registered 30 August 2002. Finalised October 2003.

The complaint related to the Council providing commercial waste collection and disposal services in competition with private service providers.

The CNU concluded that Melbourne City Council was not in breach of Victoria's CN Policy. The Council contracts CityWide Service Solutions Pty Ltd, a subsidiary company wholly owned by the Melbourne City Council, to manage Council waste collection and disposal. Melbourne City Council conducted an open public tender process in which CityWide was selected as the successful tenderer.

The Melbourne City Council has ensured that it complies with the 'corporatisation' CN policy measure by establishing a subsidiary corporate structure. Accordingly CityWide is subject to the same costs as any private operator and is required to return both an annual dividend and pay income tax equivalents to the Council.

City of Greater Bendigo – waste collection service

Complaint registered 5 October 2002. Finalised May 2003

The complaint related to the Council providing commercial waste collection and disposal services in competition with private service providers.

The CNU found that in addition to providing its statutory Council waste management service, which is outside the coverage of CN Policy, the Council's internal waste management service also provided a 'commercial' waste collection service. Council engaged an independent auditor to review its financial data and separate its CN cost adjustments thereby bringing transparency to the service cost structure.

Following the review the CNU was able to conclude that the Council's commercial waste management service is fully cost-reflective in its pricing. Consequently the Council is compliant with the CN Policy.

Complaints received since December 2002 and completed prior to December 2003

City of Kingston – child care centres

Complaint registered 10 April 2003. Finalised August 2003.

The complaint related to the Council provision of child care facilities and services in competition with private service providers.

The CNU concluded that the City of Kingston complies with Victoria's CN Policy having applied full cost-reflective pricing to the four Council operated long-day child-care centres.

Victorian Arts Centre Trust – theatre venue hire

Complaint registered 31 July 2003. Finalised December 2003.

The complaint related to the availability and pricing of Victorian Arts Centre theatre venues and facilities for hire by commercial producers.

The CNU concluded that Victorian Arts Centre Trust (VACT) is not in breach of CN Policy as the Arts Centre commercial theatre venue hire activity is not currently considered a significant business activity and therefore the VACT is not required to apply the CN full cost-reflective pricing measure.

Follow-up investigations begun and completed prior to December 2003

Bairnsdale Regional Livestock Exchange (BRLE)

Complaint registered 2 February 2001. Initial investigation finalised 31 August 2001. Follow-up finalised July 2003.

The first report concluded that the BRLE was in breach of the CN Policy – primarily due to necessary adjustments not being made to pricing for capital financing of new developments and the required rate of return on capital.

The saleyard development was completed in June 2003 and only became fully operational in August 2003. As a result of modest increases in saleyard throughput levels and a

moderate increase in fees in August 2002 the Council pricing is full cost-reflective. The Livestock exchange will be CN Policy compliant in 2003-04 based on budgeted figures.

The CNU has concluded that the East Gippsland Shire Council has satisfied the requirements of the CN Policy through fully cost-reflective pricing and is not in breach of the Victorian CN Policy.

Warrnambool City Council - Warrnambool aquatic and leisure centre

Complaint registered 2 February 2001. Investigation finalised 18 May 2001.

The first report concluded that the proposed Aquatic Centre had not reached a stage of development where an assessment in relation to CN Policy compliance in pricing access to the facility could be determined.

The Council has adjusted pricing to be fully cost-reflective.

Issues raised by National Competition Council

VicForests – application of competitive neutrality

Following the review of the *Forests Act 1958*, VicForests was established as a new entity on 28 October 2003 by the Governor-in-Council as a State Business Corporation under the *State Owned Enterprises Act 1992*. This implements specific commitments made by the Government in its *Our Forests, Our Future* and *Forests and National Parks* policies to establish a new, independent, commercial entity that would introduce market based pricing of timber resources sold from State forests.

As a government commercial entity, VicForests will be obliged to adhere to CNP including the payment of tax equivalents where appropriate. VicForests will report to the Minister for Agriculture and the Treasurer.

As set out in the Orders, the functions of VicForests are to:

- undertake the sale and supply of timber resources in Victorian State forests, and related management activities, as agreed by the Treasurer and the Minister (for Agriculture), on a commercial basis;
- develop and manage an open competitive sales system for timber resources; and
- pursue other commercial activities as agreed by the Treasurer and the Minister.

As the management of State forests is the responsibility of the Minister for Environment under the *Forests Act 1958*, VicForests will be delegated responsibilities for commercial timber harvesting in State forests after service agreements between VicForests and the Department of Sustainability and Environment (DSE) are developed. The financial projections of VicForests over the next three years will be formulated in this context.

VicForests will be required to implement an open and competitive sales system for timber and earn an appropriate return to Government. This, combined with VicForests' requirement to report separately to Parliament on its financial and operational performance, will facilitate the implementation of competitively neutral pricing and enable greater transparency and accountability of the Government's commercial timber harvesting management activities.

Compliance with CN Policy will require VicForests to account for all taxes that would apply were it privately owned. However, as the details of VicForests operations are dependent on the nature of its service agreements with DSE, the detailed application of the policy has yet to be developed by VicForests.

Port governance arrangements

The NCC requested verification that Victoria has accounted for its competitive neutrality obligations. This and matters concerning governance arrangements for Victorian ports and channels are addressed in the transport chapter.

4. Electricity

Assessment issues

- Victoria has taken a lead role in national energy market reform through COAG, the Ministerial Council on Energy and the National Electricity Market Ministers' Forum.
- Victoria has removed the majority of its derogations to the National Electricity Code. Remaining derogations relate to the transition to full retail competition and also reflect Victoria's unique separation of ownership and planning of the high voltage transmission network.
- Victoria will review the effectiveness of competition in 2004, and in light of this review will decide the ongoing need for, and form of, the consumer safety net.

Overview of progress

The National Competition Council (NCC) identified the following key areas against which to review Victoria's performance in electricity reform:

- participation in the national energy reform program;
- derogations from the National Electricity Code (NEC);
- maximising the potential for competition in the retail market.

Victoria led the development of key aspects of the national energy market reform program in 2003. Victoria will continue to actively work through the key issues that need to be resolved in finalising the details of the reform program, and is committed to the processes and timelines by which this is proposed to occur.

Transitional derogations were granted in August 2001 to enable Full Retail Competition (FRC) to be implemented in a timely and effective manner. In addition, amendments to existing derogations that recognise the unique split between transmission planning and asset ownership in Victoria were granted final approval by the Australian Competition and Consumer Commission (ACCC) in March 2003. In general, Victoria has only used derogations as a last resort where other mechanisms to deliver efficient regulatory arrangements have failed. The following sections discuss in more detail the progress and outcomes of jurisdictional legislative reviews and reforms.

Victoria has actively participated in the reform process for the introduction of contestability for electricity consumers. Victoria is progressing well towards a competitive energy market. Further, the Essestial Services Commission's (ESCs) current review of the effectiveness of retail competition will identify any measures that can be undertaken by participants, consumers, regulators and Government to enhance the potential benefits of choice of energy retailer.

National energy market reform

The Ministerial Council on Energy (MCE) meeting of December 2003 finalised the policy decisions for the national energy market reform program, in response to the 2002 COAG energy market review. A detailed work plan has been developed and approved by the MCE to implement this program. Energy market stakeholders on both the supply and demand side, together with market institutions including regulators, will be consulted on implementation of the reform program.

Victoria led the development of key aspects of the national energy market reform program during 2003, including a single national regulatory framework that provides effective regulation and minimises regulatory costs. During 2004 Victoria will be actively involved in the development of a national regulatory framework for distribution and retailing (other than retail pricing) for MCE's consideration in 2005. Following MCE agreement on the framework, the Australian Energy Regulator (AER) will assume responsibility for national regulation of distribution and retailing (other than retail pricing) by 2006. Any jurisdiction may, at their discretion, opt to transfer responsibility for retail pricing to the AER once it has assumed distribution and retail responsibilities.

The role of transmission has also been a significant issue in the National Electricity Market (NEM), with the need to balance a number of objectives, including on the one hand ensuring that the power system is secure and reliable, and that investment and operation are efficient – and on the other allowing retail price outcomes and financial risks to be effectively managed.

The NEM Ministers' Forum commissioned a report on transmission in August 2003. The final report, released in late November 2003, found that there were a number of areas where transmission arrangements could be improved, including the planning of interconnections, improved incentives to improve reliability and reduce outages, and a more effective approach to the determination of regions in the NEM.

During 2003, the MCE agreed transmission policy principles and reform directions in national transmission planning, amendments to the regulatory test, regional boundaries, inter-regional financial trading, transmission availability incentives, transmission pricing, and regulation of new inter-connectors.

In August 2003, the MCE announced arrangements to enhance the participation of energy users in the markets. Accordingly in 2004 the MCE will examine the outcomes of a trial demand side response pool in the NEM. This will include an assessment of the costs and benefits of introducing further interval metering.

Derogations from the National Electricity Code

The current regulatory framework provided by the Code, which has applied to transfers by large customers, allows the flexibility for either the retailer or the distributor (as default provider) to provide metering and data services to such customers. However, this flexibility could create significant complexities in the mass market in terms of establishing systems and processes to enable the transfer of small customers. Accordingly, derogations were approved by the ACCC to enable a simplified regime to apply in respect of the mass market for a transitional period to facilitate the orderly introduction of FRC.

Transitional derogations were granted in August 2001 to enable the implementation of FRC in Victoria in a timely and effective manner. The derogations provide that distribution businesses are exclusively responsible for the provision, maintenance and installation of all manually read interval meters, basic meters and unmetered supply points until 1 July 2004. During the transitional period, jurisdictional regulators are required by the Code to review

and make recommendations on issues including meter ownership. Victoria is likely to seek an interim extension of these derogations, to enable it to respond to the review of metering issues conducted by the ESC, which is due to report in 2004.

In March 2003, the ACCC provided final approval for amendments to existing Victorian derogations for the regulation of transmission network services, as well as the deletion of spent provisions and updating of definitional provisions in the derogations. These derogations are necessary to reflect Victoria's unique separation of ownership and planning of the high voltage transmission system. VENCorp is responsible for planning and directing the augmentation of the electricity transmission system. The amendments to the derogations ensure that an efficient and appropriate transmission regulatory framework is put in place in Victoria for the long term. They ensure that appropriate recognition is given to Victoria's separation of transmission planning functions from asset ownership, and that appropriate recognition is also given to VENCorp's not-for-profit status.

The Government has also acted to reduce the transitional assistance provided to householders, small businesses, and farmers in outer suburban and regional and rural areas following the introduction of full retail competition in the electricity industry. In April 2002 the Government introduced a 12 month Special Power Payment (SPP) scheme to facilitate in the transition to a fully effective FRC electricity market. In April 2003, the Government replaced the $118 million SPP scheme with a $57 million Network Tariff Rebate (NTR) for 12 months. Options for the delivery in 2004 and beyond of the NTR scheme are currently being assessed.

Retail market competition

Transfer process

During 2003, electricity businesses continued to use interim business-to-business (B2B) processes to support customers who transfer under retail competition. However, given the strong growth in the number of small customers transferring retailers, these interim B2B processes are becoming increasingly inefficient for electricity businesses, imposing costs on businesses and ultimately customers.

Victoria supports the development of longer-term alternatives with the prospect of greater efficiency. To this end, during 2003 the Victorian Government:

- assisted the operations of the industry B2B Management Committee, which is setting enforceable standards for B2B under regulatory mechanisms;
- assisted industry development of national standards, roadmap planning and of governance proposals;
- encouraged National Electricity Market Management Company in its development of a pilot proposal for a B2B service using existing infrastructure; and
- worked closely with the NSW Government in developing national initiatives.

Effectiveness of competition

During 2002, the Victorian Government asked the ESC to investigate whether competition in the electricity market had been effective for domestic and small business consumers since market opening. The ESC concluded that competition was not fully effective at that stage, but the building blocks are in place for the benefits of competition to flow to consumers over the next few years. Also, further improvements were expected following the introduction of competition in gas in October 2002, allowing consumers to consider

'dual fuel' offers to purchase both gas and electricity from the one retailer. In addition, the ESC noted that the market could work more effectively if customers had better access to clear and comparable information on competing offers and packages. Based on the ESC's advice that competition is not yet effective, Victoria extended its reserve power of price regulation from August 2004 to the end of 2004.

In December 2003, the Victorian Government asked the ESC to review the extent to which retail competition has been effective in the electricity and gas markets. The review will also consider measures to enhance the effectiveness of retail competition and suggest any modifications to the consumer safety net arrangements necessary in the light of the ESC's conclusions on the effectiveness of retail competition.

The ESC issued a discussion paper for comment in December 2003. A draft report will be released for consultation in March 2004, and a final report to Government is expected mid June 2004.

Retail price regulation

Victoria's goal is to have energy prices set by the market rather than regulation. However, Victoria believes that it is premature to leave consumers, particularly low-income consumers, with no price protection. Retail market power is a major issue at the outset of full retail competition, when consumers are not confident to switch and alternative retail offerings are not well developed or known to the market.

The current ESC review will also inform Government of the required scope and coverage of the "safety net" framework under which retail prices may still be regulated. The continuation of this reserve pricing power does not mean, however, that it will automatically be exercised to constrain retailers' standard prices. The Victorian Government has only intervened where it has concluded that market power is being exercised and proposed retailer pricing was not justified. It is anticipated price regulation will continue at least until full retail competition is fully effective. The need for phasing out these derogations will be determined from the results of the ESC's review of FRC.

In December 2003, the Victorian Government announced its landmark voluntary agreement with the privately owned energy retailers to lock in a pricing structure that will deliver low energy price increases to Victorians through to the end of 2007. This pricing agreement represents a real decrease in electricity prices over the four year period, and limits increases to gas prices to around CPI from 2005 onwards.

As part of this agreement, the Government decided to limit average price increases proposed by electricity retailers in 2004 to between 0.5 and 2 per cent, depending on the customers' area. These price changes took effect from 1 January 2004 and apply to the 2004 standard prices for consumers who have not taken up a market offer made by electricity retailers under full retail competition. The Government is currently finalising a Memorandum of Understanding (MOU) with the retailers, which details the processes for raising a review should the boundaries of the agreed price path to 2007 be breached. The MOU includes a methodology for recalculating the annual average tariff adjustments.

The Government's four-year price path decision provides price certainty for Victorians, and strikes a balance between protecting customers, ensuring a viable electricity industry, and enabling the continued progress of retail competition.

The four year pricing agreement will allow consumers to make better informed decisions regarding market offers made by electricity retailers. It provides a benchmark price to use as a comparison with other offers, and makes it easier for consumers to shop around for a better deal. In particular, consumers will be better informed about standard prices in three years time and can factor this into their calculations.

5. Gas

Information requests

- Significant producer provisions, national gas quality standards, *Petroleum (Submerged lands) Act 1982, Pipelines Act 1967.*

Significant producer provisions

The Significant Producer Provisions (SPP) in the *Gas Industry Act 2001* give the Essential Services Commission (ESC) power to regulate anti-competitive conduct by significant producers in the gas market in Victoria. The provisions were introduced in 1998 when gas production was dominated by the Bass Strait Joint Venture between Esso Australia and BHP Billiton.

The GIA required the provisions to be reviewed by 30 June 2003, to consider whether they should be repealed or amended. The ESC undertook the review and submitted its report to Government in June 2003. That report concluded that given the extent to which gas market competition has developed since 1998, the underlying objective of the provisions would appear substantially to have been achieved. The ESC recommended that the repeal of the SPP is warranted and appropriate when considered solely in terms of the future needs of a competitive gas market.

The Government is intending to repeal the significant producer provisions in the Autumn 2004 sitting of Parliament.

National gas quality standards

Standards Australia published the national standard for general purpose natural gas, AS 4564/AG864, early in 2003. Victoria's Gas Quality Regulations are substantially consistent with AS 4564/AG864 but do not directly reference the standard. Victoria is in the process of updating its Gas Quality Regulations and has produced an issues paper for consultation with industry. Following completion of the consultation process during 2004, Victoria will amend its regulations to ensure they are fully consistent with and reference the national quality standards.

Submerged lands

A national review of the *Petroleum (Submerged Lands) Acts* operating in Australia has been conducted. A Ministerial Council comprising relevant State and Territory Ministers considered the report of this review on 25 August 2000. The Ministerial Council concluded that the mirror Commonwealth, State and Northern Territory legislation that governs exploration and development of the nation's offshore petroleum resources is essentially pro-competitive. Where there are restrictions on competition these are necessary to protect the interests of the community as a whole, and the benefits of the restrictions outweigh the costs (for example, to reduce negative externalities).

The review report and response were released in 2001. A number of the recommendations that are accepted by the Government will not require legislative change. For those recommendations requiring legislative change, the Commonwealth has enacted the *Petroleum (Submerged Lands) Act 2002 (Commonwealth).* Victoria will amend its *Petroleum (Submerged lands) Act 1982* to reflect changes to the Commonwealth legislation. The amendment Bill will be passed in the Autumn 2004 Parliamentary sittings. These amendments are expected to be part of the rewrite of the Act which is expected to occur in 2005 following the introduction and passage of a rewrite of the Act by the Commonwealth.

Pipelines

The review of the *Pipelines Act 1967* and the Government response was completed in 2002. The review did not identify any major restrictions on competition. The *Pipelines Act 1967* is currently the subject of a complete review that will develop a regulatory framework contemporary with other forms of infrastructure. Recommendations from the National Competition Policy review of the Act will be taken into account as the draft legislation is developed. The review of the legislation is expected to be completed in 2004 and implemented by 2006.

6. Environment and natural resources

Assessment issues

- Suspension pool: *Fisheries Act 1995; Extractive Industries Development Act 1995.*
- Other Legislation: *Environment Protection Act 1970, Land Act 1958, Crown Land (Reserve) Act 1978* and related Acts*, National Parks Act 1975, Property Law Act.*
- Other Issues: State forests.

Suspension pool

Fisheries

The NCP review of the *Fisheries Act 1995* was released in 1999 and the Government response was released in 2001. The majority of recommendations have now been introduced with the passage of amendments to the Act in Spring 2003, including the introduction of full cost recovery for fishery management costs which is due to commence in April 2004.

The Government has delayed implementation of the recommendations for rock lobster pot limits while it undertook further investigation of sustainability and compliance issues. These investigations have indicated that removing pot limits will affect the ecological sustainability of the fishery, including increased risk of interaction (and injuries) with protected species such as southern right whales. The Government is now of the view that the public benefit of these restrictions based on the ecological sustainability of the fisheries outweighs any restrictions on competition in relation to removing pot limits for rock lobster fisheries, and further work is being undertaken.

The Government has adopted a precautionary approach for abalone quotas in line with Ecologically Sustainable Development policy. Sustainability issues arose following advice from Primary Industries Research Victoria (PIRVic, formerly the Marine and Freshwater Resources Institute), including an increased risk of serial depletion through the concentration of fishing effort at reefs already regarded as fully exploited. Government has therefore delayed implementation of this recommendation until sustainability and compliance issues arising from the proposed changes to sustainable fishing practices can be resolved.

The Government has been working closely with industry representatives to address important sustainability concerns and how these will be managed appropriately through the full implementation of the Victorian Abalone Fishery Management Plan. The Victorian Abalone Fishery Management Plan is being progressively implemented and the remaining major initiative involves the NCP recommendation for the separation of quota from the

access fishery licence that will be applied following the successful resolution of the sustainability issues.

Extractive industries development

The review of the *Extractive Industries Development Act 1995* was completed in 2002, and the Victorian Government response completed in 2003. The Government accepted the majority of the Review recommendations. The required legislative amendments to the Act were passed in Spring 2003 as part of the *Extractive Industries Development (Amendment) Act 2003*. The majority of the administrative recommendations have been accepted and the relevant policy and procedures amended.

A small number of administrative review recommendations were not accepted. The Government found no link between these recommendations and competition policy concerns.

Other legislation

Environmental protection

The NCP review of the *Environment Protection Act 1970*, subordinate legislation and the *Litter Act 1987* was released in August 2000. The main conclusions from the review were that both Acts substantially comply with competition principles. Consequently only a number of minor changes were recommended. The Government response was released in 2000, and accepted the majority of recommendations made in the review. Implementation of many of the recommendations was incorporated into amendments to the Acts and associated regulations in 2000. The remainder of accepted recommendations have been implemented through the EPA's on-going policy and program activities.

Crown land

The Government is planning to undertake a further review of the *Land Act 1958* and *Crown Land (Reserves) Act 1978* in 2004 in order to update the Acts and remove a number of redundant and outdated provisions. The Government's response to the NCP review of these Acts will be incorporated into this review.

The NCP review report and a Government response will be released in March 2004. Legislative amendments will be made in Spring 2004 and will include any changes required to implement NCP recommendations.

National parks

The NCP review report of the *National Parks Act 1975* and the Government response is anticipated to be released in March 2004. Any required legislative changes to the Act will be made in Autumn 2004 or Spring 2004.

Property law

This Act was removed from the schedule in 2001.

Other issues

State forests

The changes to forestry planned for 2004, both legislative and non-legislative, together with the amendments to the *Forests Act 1958* already implemented by the *Forests and National Parks Act (Amendment) Act 2003*, will give complete effect to the Government response to the NCP review of the Act. The requirement for the Secretary to issue sawlog licences within 2 per cent of sustainable yield has already been revoked. Commercial functions are now being split from policy/regulatory functions as the new corporation, following the establishment of VicForests in 2003.

Transparent allocation and pricing systems will be facilitated by VicForests' introduction of a new system based on contracts rather than licences. The streamlining of leasing, licensing and permit provisions will facilitate competition and efficiency in the utilisation of forest produce. These legislative and non-legislative changes will achieve all of the Government's commitments in relation to the NCP review of the Act in 2004.

The transfer of business operations from Forestry Victoria to VicForests is under way, although some details are yet to be finalised. On 28 October 2003 an Order in Council (Victorian Government Gazette No. S198) was made to establish VicForests as a State Business Corporation under the *State Owned Enterprises Act 1992*. This implements specific commitments made by the Victorian Government to establish a new, independent, commercial entity that would introduce market based pricing of timber resources sold from State forests. VicForests will report to the Minister for Agriculture and the Treasurer. The functions of VicForests are to:

- undertake the sale and supply of timber resources in Victorian State forests, and related management activities, as agreed by the Treasurer and the Minister (for Agriculture), on a commercial basis;
- develop and manage an open competitive sales system for timber resources; and
- pursue other commercial activities as agreed by the Treasurer and the Minister.

Currently the management of State forests is the responsibility of the Minister for Environment under the *Forests Act 1958*. The Secretary of the Department of Sustainability and Environment (DSE) will remain as the land manager; managing State forests for their entire range of uses and values. This role incorporates ecological values, recreational and cultural uses, and timber resources. Service agreements between VicForests and the DSE are being developed to clarify the role that will be transferred or delegated to VicForests.

Legislative amendments were made in Spring 2003 to the *Forests Act 1958* and the *Conservation Forests and Lands Act 1987* to allow the Secretary of DSE to delegate certain powers to VicForests. Legislation to support its operational powers is being developed for introduction and passage in Autumn 2004, which will make VicForests responsible in its own right for commercial forestry in State forests. VicForests is required, under the *State Owned Enterprises Act 1992*, to operate its business as efficiently as possible, consistent with commercial practice. It must be commercially focussed and deliver value for money services. Its overall profitability will depend on the prices that can be realised on the various products, decisions on its role in delivering community service obligations and market access.

VicForests will be required to implement an open and competitive sales system for timber resources and earn an appropriate return on assets. This, combined with VicForests' obligation to report separately to the Victorian Parliament on its financial and operational performance, will facilitate the implementation of competitively neutral pricing, and enable greater transparency and accountability of the Victorian Government's commercial timber harvesting activities.

Victoria recognises that accounting for taxes, such as local rates, on commercial forestry activities is required to ensure implementation of its competitive neutrality policy. However, the details of how the local tax equivalent will be applied have yet to be established.

7. Agriculture and related industries

Assessment issues

- Suspension pool: *Agricultural and Veterinary Chemicals (Victoria) Act 1994*, *Agricultural and Veterinary Chemicals (Control of Use) Act 1992.*
- Other legislation: *Livestock Disease Control Act 1994*, *Stock (Seller and Declarations) Act 1993.*

Suspension pool

Agricultural and Veterinary Chemicals

The Commonwealth has begun the reform of the national registration scheme. Some reforms are proceeding via non-legislative mechanisms. Victoria does not require legislative changes to the *Agricultural and Veterinary Chemicals (Victoria) Act 1994* to implement the national chemical registration scheme once the Commonwealth's legislation is implemented.

Specifically, the following issues which were outstanding have been addressed by the Commonwealth:

- Cost recovery - a revised fee and levy structure has been developed and endorsed by the Primary Industries Standing Committee. It is proposed that the Bill to amend this Act be introduced in the Autumn 2004 sittings of the Commonwealth Parliament and the new fee structure to commence on 1 July 2004.

- Licensing of agricultural chemical manufacturers – a Regulatory Impact Statement was released in December 2003 and a new quality assurance system commenced on 1 March 2004.

- Contestability of chemical assessment services – the operating framework was endorsed by Federal Cabinet in December 2003.

- Compensation for third party access to chemical assessment data – a policy document has been developed by government and agreed with industry. Initial drafting instructions for legislation are being prepared for further consultation with industry.

The review of the *Agricultural and Veterinary Chemicals (Control of Use) Act 1992* recommended that a control-of-use task force be developed to establish a nationally consistent approach to off-label use. There was agreement by the Agriculture and Resource Management Council of Australia and New Zealand Control of Use Taskforce with respect to the need to licence aerial spraying businesses.

The mandatory insurance for ground spraying was removed from business licensing requirements in Victoria as a result of the NCP review. However, Victoria believes there are public interest reasons for retaining the requirement for aerial sprayers to hold an approved public liability insurance policy. Aerial spraying is a higher risk activity compared to ground spraying, and is carried out in areas or under conditions where ground spraying could not be done (such as hilly areas or areas too wet to allow access by ground equipment at the relevant time). This is especially the case for the use of herbicides for noxious weed control.

Some other states such as New South Wales and Tasmania have continued to require professional aerial sprayers to hold insurance for a minimum of $30 000 damage. This type of insurance is provided by a very limited number of companies, the Australian Aviation Underwriting Pool being the largest and covering the majority of the industry, which comprises approximately 400 pilots in Australia. The relatively small value of insurance required for aerial spraying strikes a balance between providing coverage for minor adverse incidents arising from off-target spraying and preserving the financial viability of the underwriters providing insurance.

Victoria fully supports the merit in a national scheme for aerial spraying and will continue to work towards this. Victoria would be happy to reconsider the insurance requirement for aerial spraying once the national working group has made its recommendations.

Other legislation

Livestock disease control

The reviews of the *Livestock Disease Control Act 1994* and the *Stock (Seller and Declarations) Act 1993* were completed in January 2002.

The Government accepted all the review recommendations. The only recommendations requiring legislative change are:

- specifying a maximum time period for suspension from the register in the legislation; and

- consideration of the introduction of a formal appeals process as a complement to the Secretary's power to refuse a declaration or remove it from the register.

Therefore a minor amendment to the *Stock (Seller Liability and Declarations) Act 1993* is required. The amendment is to be included in the *Primary Industries Legislation (Miscellaneous Amendments) Bill* proposed for Autumn 2004.

8. Planning construction and development services

Assessment issues

- Suspension pool: *Surveyors Act 1978*, *Architects Act 1991*, *Building Act 1993.*

Suspension pool

Surveyors

The NCP review of the *Surveyors Act 1978* identified 12 actions to be undertaken by the Government, five of which have already been implemented, as they did not require legislative change. The remaining seven actions were addressed by the *Land Surveying Bill 2001*, which was drafted to replace the *Surveyors Act 1978*. However, the Bill lapsed following the calling of the November 2002 State election. Subsequently, the draft Bill went through a comprehensive consultation process and was generally supported by the surveying industry, although some amendments were suggested. The suggested amendments are not likely to impact on NCP compliance.

To ensure that draft legislation can be introduced into Parliament in the Autumn 2004 sitting, the *Land Surveying Bill 2001* and suggested amendments will form the basis of the *Surveying Bill 2004*. Due to the minor nature of the changes made to the *Land Surveying Bill 2001*, and the fact that this Bill went through the full NCP process in 2002, the Government does not intend to release an exposure draft of the *Surveying Bill 2004*. The Government intends to introduce the *Surveying Bill 2004* in the Autumn 2004 sitting of Parliament.

Architects

The Government intends to introduce amendments to the *Architects Act 1991* in the Autumn 2004 sitting of Parliament as part of the proposed *Architects and Building Acts (Amendment) Bill*.

The proposed *Architects and Building Acts (Amendment) Bill* will:

- increase the membership of the Architects' Registration Board from eight to ten members to include two additional members with experience of the building industry and to provide that neither consumer representatives nor industry representatives may be architects;

- remove the broad restriction on the terms "architecture" and "architectural" by persons who are not registered architect and replace it with a more limited restriction by only controlling the use of the terms "architectural services", "architectural design services"

and “architectural design”. The relaxation of the broad restriction over “architectural” and “architecture” is to be complemented with a strengthened provision that limits persons representing themselves as architects when not registered as such;

- amend the registration provisions so that architects who are in active practice are required to hold insurance and identified as such in the register. An architect who is insured will be known as an "insured architect";

- shift responsibility for recording the currency and compliance with insurance requirements for architects to the Architects Registration Board;

- amend the *Architects Act 1991* so that provisions currently in the Building Act for the making of Ministerial Orders concerning insurance requirements for architects, will now be included in the legislation;

- reduce the number of partners or directors in a partnership or company practising architecture from the current two-thirds ownership or control by architects to a requirement that at least one director or partner be a registered architectural practitioner. This change is consistent with the provisions in the *Building Act 1993* (section 176) relating to building partnerships and companies;

- amend the membership of the Tribunal so that it no longer includes members of the Architects Registration Board, and is extended to include a person with legal experience and knowledge nominated by the Director of Consumer Affairs Victoria (as defined in section 3 of the Fair Trading Act), a practising architect who is not a Board member, and a person who is not an architect and who is not a member of the Board. Tribunals are to be appointed by the Board from a list of potential members approved by the Minister;

- include provisions for alternative dispute resolution mechanisms; and

- change the membership of the Building Practitioners Board to include a person who is a member of the Architects Registration Board, thereby facilitating better understanding between the two Boards.

Building

Proposed changes to the *Building Act 1993* arising from the recommendations of the NCP Review are included in the proposed *Architects and Building Acts (Amendment) Bill*, which will be introduced to the Autumn 2004 sitting of Parliament (see above).

The NCP Review of the *Building Act 1993* also recommended major increases in regulation of the industry. The Government response to the Review recommends that these matters be considered over a longer time frame due to the significant cost implications arising from them. These matters were addressed in an Industry Discussion Paper released in September 2003 ("Review of the categories and classes of building practitioner registration in Victoria"). The submission period for comments on this paper closed on 19 December 2003.

The Building Commission will consider the submissions and release a position paper in 2004.

The matters raised in the NCP Review relating to the *Building Act 1993* have been addressed in the Industry Discussion Paper and action will be taken based on a thorough assessment of the submissions received.

9. Transport

Assessment issues

- Suspension pool: *Transport Act 1983* (provisions relating to tow trucks) and Transport (Tow Truck) Regulations; *Port Services Act 1995*.

Suspension Pool

Tow trucks

The NCC assessment in 2003 concluded that the need and location restrictions had not been demonstrated to be the only means of achieving the objectives of orderly conduct at accident scenes and ensuring an adequate supply of tow trucks in all regions.

Agreement has been reached to undertake an independent public benefit test to examine whether:

- the restriction to entry can be justified on net public benefit grounds;
- there is a dependency between the need and location restrictions and the allocation system; and
- there are alternative, less restrictive ways, of achieving the objectives.

It is anticipated that this public benefit test will be completed by the end of 2004.

Legislation has been amended to:

- provide for the licensing authority to impose accreditation as a licence condition of accident attending tow trucks;
- exempt non-accident towing of motorcycles from basic licensing requirements;
- provide for the referral of all proposed amendments in towing fees to the Essential Services Commission for independent review, with the report to be publicly released; and
- an extension of the cooling off period to 72 hours for consumers of repair services.

From March 2004, information on the allocation of work for each tow truck depot is to be published on the web, and consumers of accident towing services will receive an information package.

Other issues

Taxis and hire cars

Applications for the issue of the first 100 peak service taxi licences were invited and assessed in 2002. The first 100 peak service taxi licences were released at the rate of 25 per quarter, with the first peak service taxis on the road in January 2003. In addition, 20 taxi licences in non-metropolitan Victoria have been issued since May 2002. A similar licence issue program will apply for each 100 Peak Service Taxi licences this year, and subsequent years.

The Bendigo Stock Exchange (BSX) has been appointed to accredit brokers who trade in taxi licences and to manage a public register of prices paid for licence transfer and assignment transactions. Additional legislative amendments to provide regulation making powers to support broker accreditation were passed in Spring 2003. Accreditation of brokers and trading through the BSX managed arrangements will begin in April 2004.

As reported in the Victorian 2003 NCP report, the public interest test for entry to the hire car industry has been removed and the vehicle standards have been relaxed. The Essential Services Commission's review of the hire car licence fee has commenced. The inquiry, which includes consideration of whether the licence fee constitutes a significant barrier to entry, is to report by 1 August 2004.

Trams/Trains

National Express Group Australia ceased providing financial support to its 3 Victorian franchises (V/Line Passenger, M>Tram and M>Train) beyond 23 December 2002, placed its services in administration and returned responsibility for their management to the Government. The Government appointed a receiver to manage the businesses under the terms of the Franchise Agreement and has met the cost of operating the 3 National Express franchises since then. The Government has accessed performance bonds secured as part of the franchise process and put public transport on a financially sustainable footing with a view to the system remaining in private operation.

The Government announced on 19 February 2004 that negotiations with Yarra Trams and Connex to implement structural reforms to the metropolitan franchises had been concluded. New partnership agreements are to be executed between Yarra Trams and Connex to establish one metropolitan tram company and one metropolitan train company to deliver stable and improved services to customers. The new partnership agreements will come into effect in April 2004.

Ports

The *Port Services (Port Management Reform) Act 2003* received Royal Assent on 11 November 2003. This Act completed the second stage of legislation reform in accord with the Victorian Government's response to the Review of Port Reform in Victoria in the mid 1990s. Marine Safety Victoria has also completed its analysis of gaps and inconsistencies in the marine safety legislation. A *Marine (Amendment) Bill* is currently being drafted to implement the necessary changes. Passage of the Bill is expected in Autumn 2004. All NCP recommendations have been implemented.

The *Port Services (Port Management Reform) Act 2003* establishes the Victorian Regional Channels Authority (VRCA) as the legal successor to the Victorian Channels Authority (VCA) with responsibility for all of Victoria's commercial shipping channels, except those servicing the Port of Melbourne, which are now the responsibility of the new Port of Melbourne Corporation (POMC).

The *Port Services (Port Management Reform) Act 2003* also established the new Port of Hastings Corporation (POHC) as the legal successor to the Hastings Port (Holding) Corporation (HPHC), with a broader charter to plan and manage for the future of the Port of Hastings.

Competitive Neutrality – ports and channels

All of the new entities created through the two-stage legislative process in response to the Russell Review – the Port of Melbourne Corporation, the Victorian Regional Channels Authority and the Port of Hastings Corporation – are port corporations under the *Port Services Act 1995*. Therefore they are subject to the same competitive neutrality principles and requirements as their predecessors. Each is subject to all State and Federal taxes in compliance with the Victorian Tax Equivalence System, all State and Federal regulations applying to private sector organisations, all local government rates and charges, and the State's Financial Accommodation Levy.

In May 2003 the Essential Services Commission (ESC) released its final report on port channel access. The key recommendations were that the Victorian channels access regime should be retained and implemented through:

> *"declaration of those existing commercial shipping channels that provide the incentive and capacity for anti-competitive discrimination in the prices and terms of access to channel services, specifically the Port Phillip channels servicing Geelong and Melbourne, and possibly the channels serving Portland and Hastings; and application to the National Competition Council for certification as an effective State-based regime under the Competition Principles Agreement".*[2]

The Government is progressively implementing the ESC recommendations and has amended the *Port Services Act 1995* to incorporate specific enhancements to the channel access regime contained in that Act. Declaration of the commercial shipping channels in Port Phillip Bay, and potentially other commercial ports, is expected to occur during 2004 following further consultation with the ESC and port operators. In the meantime, the VCA and the POMC have entered into a formal agreement for the provision of channel services by POMC to VCA (and its successor, the VRCA). This agreement is subject to the oversight and endorsement of the ESC to ensure that competitive neutrality in terms of access and pricing between Melbourne and Geelong is maintained.

[2] ESC 2003, p.12 *Inquiry into Port Channel Access in Victoria Final Report*, May

10. Health and pharmaceutical services

Assessment issues

- Suspension pool; *Pharmacists Act 1974*; *Drugs, Poisons and Controlled Substances Act 1981*.
- Other Legislation: *Therapeutic Goods (Victoria) Act 1994, Pathology Services Accreditation Act 1984*, *Cemeteries Act 1958*.

Suspension pool

Pharmaceutical services

A Victorian NCP review commenced in 1997 but was put on hold in 1998, when all jurisdictions agreed to a National Review of pharmacy legislation. Consequently, the *Pharmacists Act 1974* is the only Victorian health practitioner registration Act for which NCP reforms have not been implemented.

The National Review considered legislative restrictions on the ownership and operation of community pharmacies as well as registration of pharmacists across all jurisdictions. The final Report was tabled in February 2000.

The Council of Australian Governments (COAG) established a Senior Officials' Working Group to advise on the Report's recommendations. The Working Group's Report was released in August 2002.

Victoria prepared a discussion paper following the National Review and COAG Senior Officials' response. The paper focused on implementation of recommendations arising from the National Review process, rather than re-examination of those issues considered at a national level. The discussion paper also examined any restrictions on competition within the Victorian act that were not considered by the National Review, along with any new proposals for regulation that might restrict competition.

In making its recommendations at a national level, the COAG Senior Officials' Working Group noted that, while jurisdictions may agree in principle on proposed NCP reforms to pharmacy legislation arising from the National Review, a State's desire to have a consistent approach to the regulation of all registered health professions may influence how such reforms are implemented. This is particularly relevant in Victoria, where implementation of the recommendations of the National Review is part of a State level review process designed to update pharmacy legislation generally to make it consistent with the Victorian model for health practitioner regulation applied to other registered health professions. In addition, the Victorian model of health practitioner regulation that has been in operation for ten years is currently being reviewed and updated.

While it is anticipated that the National review and the State level reviews will form the basis for updating Victorian pharmacy legislation to reflect the Victorian model of health practitioner regulation, it is recognised that aspects of the pharmacy profession differ from other health professions and different regulatory solutions may be required.

In addition, the State review has provided an opportunity for interested parties to make comment on evolving issues directly related to the pharmacy profession, such as:

- regulation of dispensary assistants;
- proposals for a national registration scheme;
- access to rural and remote pharmacy services.

Drugs, poisons and controlled substances

The final report of the National Competition Review of National Drugs, Poisons and Controlled Substances Legislation was submitted to COAG in January 2001. A Working Party of the Australian Health Ministers Advisory Council (AHMAC) was established in February 2001 to assist in the preparation of comments on the Review Report.

After a lengthy consultation process with various government agencies, a draft response to the Review was endorsed by AHMAC on 29 May 2003.

It is understood that the Australian Health Ministers Conference (AHMC) has endorsed the response out-of-session. AHMC is required by the Terms of Reference of the Review to forward the report to COAG with their comments. The Commonwealth is making arrangements for it to go to COAG in early 2004. In the response, the timeframe for implementation of the recommendations is within 12 months from the date of COAG endorsement.

Implementation of reforms resulting from the report is complex. It requires the cooperation of States and Commonwealth as well as resolution of issues that span different government portfolios (eg interaction with agricultural and veterinary chemicals legislation). Implementation of some of the major recommendations will be dependent on legislative action being taken by the Commonwealth.

The Commonwealth is only now developing legislative amendments required to establish the Trans-Tasman Therapeutic Goods Agency (Treaty signed 10 December 2003 and agency due to begin operation on 1 July 2005).

Victoria intends to implement all NCP recommendations from the review once endorsement by COAG takes place. Implementation of some recommendations will be dependent on legislative action being taken by the Commonwealth with respect to recommendations and the single joint agency for therapeutic goods pursuant to the Trans-Tasman Agreement. Nevertheless, Victoria has been proactive in the process, including negotiating with the Commonwealth Department of Agriculture, Fisheries and Forestry, to resolve outstanding issues.

Victoria already complies with a number of the recommendations, including:

- scheduling decisions covered by the Standard for the Uniform Scheduling of Drugs and Poisons are adopted by reference on their effective dates (Recommendation 4);
- unscheduled medicines are permitted to be sold through vending machines (Recommendation 8);

- poisons licence holders may sell all medicines contained in Schedule 2 (Recommendation 15); and

- recording and reporting transactions in drugs, poisons and controlled substances (Recommendation 16).

As well, the *Drugs Poisons and Controlled Substances Act 1981* (section 27A) adopts the labelling, packaging and advertising provisions of the National Standard for the Uniform Scheduling of Drugs and Poisons by reference through the Poisons Code. Once the Commonwealth includes controls on packaging, labelling and advertising in Commonwealth legislation (Recommendation 22) and they are removed from the Standard Uniform Scheduling of Drugs and Poisons, the requirements under Victorian legislation will automatically be removed.

In anticipation of endorsement by COAG, action has been taken through the National Coordinating Committee on Therapeutic Goods (NCCTG) to develop the following supporting documents or reports to enable implementation of review recommendations:

- the Standard for Informational Price Advertising and Publication of Consumer Medicine Information (Recommendation 11d);

- a research project on Medicine Schedules and Associated Professional Support (commissioned by the Pharmacy Guild of Australia) in order to report results and research to the AHMC (Recommendation 5); and

- updating of the Code of Good Wholesaling Practice (Recommendation 18).

Recommendations regarding legislative change in 2004 are being prepared.

A meeting of NCCTG has been arranged for March 2004 to develop a work plan to implement the review recommendations within 12 months.

Other legislation

Therapeutic goods

The *Therapeutic Goods (Victoria) Act 1994* is principally complementary legislation to the Commonwealth *Therapeutic Goods Act 1989* in that it fills constitutional gaps with jurisdiction of the Commonwealth legislation. Largely because of this, the in-house NCP review of the *Therapeutic Goods (Victoria) Act 1994* identified only administrative amendments that do not alter the effect of the legislation. These recommendations will result in streamlining and increasing assurance of processes across jurisdictions. Due to the relationship between the *Therapeutic Goods (Victoria) Act 1994* and the Drugs, Poisons and Controlled Substances legislation, implementation of the recommendations has been delayed until finalisation of the NCP review of the Drugs, Poisons and Controlled Substances legislation. Implementation of some of the reforms will be dependent on legislative action being taken by the Commonwealth. These amendments are also complicated by the fact that the Commonwealth is yet to develop legislative amendments arising from the establishment of the Trans-Tasman Therapeutic Goods Agency. Recommendations regarding legislative change in 2004 are being prepared.

Pathology

A panel, chaired by Mr Don Nardella MP, conducted a review of the *Pathology Services Accreditation Act 1984* in 2003. In response to the panel's recommendations, Parliament passed the *Health (Further Amendment) Act (Vic) 2003* to repeal the *Pathology Services Accreditation Act 1984*. The *Pathology Services Accreditation Act 1984* was repealed on 1 January 2004.

Cemeteries

The *Cemeteries and Crematoria Act 2003* received Royal Assent on 11 November 2003 and will come into force on 1 July 2005. The Act is consistent with the "National Competition Policy Review of the *Cemeteries Act 1958* – Government Response – July 2001".

Health Purchasing Victoria

In 2001, the Government amended the *Health Services Act 1988* to establish a centralised hospital purchasing agency, Health Purchasing Victoria (HPV) to act as an agent in the purchasing of some goods and services for public hospitals. Section 130 of the Act provides that HPV represents the Crown, unlike public hospitals that expressly do not represent the Crown.

The *Health Services Act 1988* was amended by the *Health (Further Amendment) Act 2003* to allow the conduct of HPV and the hospitals, their officers and employees in entering into arrangements for the purchase of goods to be disregarded for the purposes of the *Trade Practices Act 1974*. The authorisation only applies when those officers are acting in accordance with the provisions in the *Health Services Act 1988 (Vic)* which govern HPV.

Section 51 of the *Trade Practices Act 1974* permits anything specified in and specifically authorised by legislation or regulations passed by a State to be disregarded for the purposes of determining whether Part IV of the TPA has been breached where such an authorisation is in the public interest.

11. Retail

Assessment issues

- Other issues: Ongoing reform implementation in the areas of retail trading and liquor licensing.

Recent progress

Shop trading - further reforms

Victoria introduced major reforms to its shop trading laws in 1996 that made its regime one of the most liberalised in Australia. Accordingly, the NCC concluded in its second tranche assessment that Victoria had met its NCP obligations in this area. Under the *Shop Trading Reform Act 1996*, shops were unrestricted in opening throughout the year, apart from 2.5 days of special significance—Christmas Day, Good Friday and before 1pm on ANZAC Day.

Shops could still trade on the 2.5 days of restricted trading if they employed fewer than 20 people and were of an exempt business type. This latter group of businesses included petrol stations, grocery stores and bread shops.

During 2003, Victoria introduced further reforms to make shop trading laws simpler, fairer and more consistent. The key elements of the reforms were:

- abolition of the cumbersome list of exempt shops, enabling any small shop to trade on the restricted trading days, regardless of their type of business;
- amendments to the employee threshold in the Act to enable more small businesses to trade without restriction, particularly those that operate from several locations: the 20 employee limit was replaced by a provision allowing a shop to open on a restricted trading day if it has less than 20 employees working in the shop at any time on that day and it employs fewer than 100 people across its related corporate entities;
- provision for petrol stations, chemist shops and restaurants, cafes and takeaway outlets to open throughout the year without restriction, regardless of size;
- removal of shops that provide services or hire goods from the coverage of the Act, so that they are no longer restricted by shop trading laws; and
- introduction of Easter Sunday as a restricted trading day, taking the total number of restricted trading days in Victoria to 3.5. This is in line with the treatment of Easter Sunday in most other jurisdictions. Exemptions from trading restrictions can be sought for trading linked to an existing event or festival.

These reforms maintain Victoria's liberal approach to regulation of shop trading, simplify existing arrangements and give more small businesses greater choice on whether to open on restricted trading days.

Liquor licensing

As reported in 2003, amendments to the *Liquor Control Reform Act 1998* provide for the phasing-out of the 8 per cent cap on packaged liquor licence holdings by a single entity by 2006. Implementation of this phase-out is proceeding according to the following schedule:

From 1 July 2003	11 per cent (present level).
From 1 July 2004	12 per cent.
From 1 January 2006	No percentage applies.

12. Gaming

Assessment issues

- Suspension pool: *Tattersall Consultation Act 1958, Public Lotteries Act 2000*.
- Ongoing reform: racing and betting, gaming machine legislation, Club Keno legislation.

Suspension pool

Lotteries legislation

Victoria completed legislative reform in this area with the introduction of the *Public Lotteries Act 2000,* repealing the *Tattersall Consultation Act 1958*. The Act allows for multiple lottery licences by enabling the Minister to determine the number of licences that may be issued. In its 2002 assessment, the National Competition Council (NCC) assessed the Act as meeting NCP requirements.

Victoria indicated to the NCC in its 2001 and 2002 reports that extending the exclusive licence beyond the expiry of the current licence in 2004 was one of the options open to it. In accordance with the legislation, the Minister for Gaming subsequently agreed to a premium payment of $3 million by Tattersall's in exchange for a continued exclusive licence from 1 July 2004 to 30 June 2007.

Significant economies of scale exist in the provision of lotteries products. If one jurisdiction allows open access to its lotteries market without reciprocal rights in other jurisdictions, the outcome is likely to be detrimental to the local supplier. As there is only a three-year gap between the expiration of the Victorian and NSW exclusive licenses, Victoria believes there are strong public benefit arguments for granting the extension to the Tattersall's lotteries licence to 2007, when the NSW exclusive lotteries licence expires. The decision of the Victorian Government in this regard is designed to support competition through the creation of a truly contestable national market. Victoria has initiated discussions with NSW on how to progress moves to a contestable market for lottery licences in both States post 2007, demonstrating its commitment to NCP in this sector.

It should also be noted that the extended licence was granted partly on the basis that Tattersall's accepted measures to create greater openness and transparency in the gaming sector. The extension requires Tattersall's to agree on a format with the Gaming Minister that discloses the costs of operating its gaming related licences in Victoria, creating greater transparency in financial reporting.

The Government will conduct a thorough review its options for post 2007 lottery industry arrangements with a proposed completion date in 2005.

The passage of the *Public Lotteries Act 2000* allowed the Government to conduct a competitive tender for the Football Tipping licence in 2000. The licence was awarded on the basis of probity, technical capacity and the commercial offer made to the Government.

Ongoing reform

Gaming machine legislation

Victoria completed a review of its gaming machine legislation in late 2000 and released its response in July 2001. The Government accepted in principle the review recommendations to increase competition in the gaming industry and has committed to reviewing the gaming machine and wagering industry structure and licence arrangements prior to the expiration of the current licences in 2012. The Government will conduct this review within the current term of Government, with a proposed completion date of early 2006. The review will include consideration of the outstanding recommendations made in the NCP review of the industry that the Government accepted in principle.

Club Keno legislation

The *Club Keno Act 1993* was reviewed in 1997 and a response released in February 2003 (detailed in legislative review tables). The Government response was based on the Government's commitment to fostering responsible gambling and addressing problem gambling.

The response reflects the Government position that a uniform approach to all forms of gambling is appropriate. As the two gaming machine operators currently conduct Club Keno, the Government believes that any changes to this legislation should be considered as part of the review of post 2012 gaming machine and wagering industry arrangements.

Racing and betting legislation

Minimum telephone bet limits

The Government continues to implement a phased reduction of minimum telephone bet limits initiated in July 2001. The limits will be reduced on an annual basis until totally abolished by July 2004.

Prohibition on proprietary racing

Prohibition is to be maintained until proponents can provide detailed costed recommendations for their independent regulation. An assessment process has been established for these, but no submissions have been made by alternate racing codes for independent regulation.

Review of restrictions on cross-border advertising

Victoria has agreed to abolish restrictions on cross-border advertising by betting operators subject to New South Wales also agreeing to do so.

13. Services and consumer affairs

Assessment issues

- Suspension pool: *Private Agents Act 1966*; *Travel Agents Act 1966*; *Legal Practice Act 1996*; and *Trade Measurement Act 1995*, Victorian WorkCover Authority, Traffic Accident Authority.
- Other Legislation: *Consumer Credit (Victoria) Act 1995*; *Legal Aid Act 1978*; *Rules of Council of Legal Education 1993*; *Trustee Act 1958*; and *Trustee Companies Act 1984*.

Suspension pool

Private agents

Two reviews have been undertaken in relation to the *Private Agents Act 1966,* the first being the Freehills review in 1999, the second being a cost benefit analysis by PriceWaterhouseCoopers (PWC) in 2001.

The Government has approved in principle the drafting of the *Private Security Bill*, which is proposed for introduction in the Autumn 2004 sitting of Parliament. The proposed Bill will regulate most of the private agents currently covered by the *Private Agents Act 1966*, which would then only regulate commercial agents and sub agents.

The proposed *Private Security Bill*, will extend licensing to bodyguards and apply registration on the basis of probity to alarm and CCTV installers and security consultants. It would also apply competency requirements to all licence applications. However, licensing would not extend to 'high end' locksmiths, or process servers, as recommended in the report by PWC.

If the Bill is passed by Parliament, Victoria will have met its CPA obligations in relation to Private Agents.

Travel agents

An NCP report was submitted to the Ministerial Council on Consumer Affairs (MCCA) in 2000 and subsequently released for stakeholder comment. In November 2002, MCCA agreed on a response to the national review which was prepared with advice from the COAG Committee on Regulation Reform and the Commonwealth Office of Regulation Review. The Government expects that amending legislation will be introduced during Autumn 2004. This will cover the removal of the Crown exemptions, while an Order-in-Council is being drawn up to amend the current licence exemption threshold.

The Government did not support the original recommendations for removal of entry qualifications for travel agents, or the replacement of compulsory membership of the Travel

Compensation Fund (TCF) with a competitive insurance system, whereby private insurers compete with the TCF.

The Government considers that some qualification standards should be retained as consumers of travel, especially those travelling overseas, are highly vulnerable to potentially serious problems such as being stranded in a remote location due to an incorrect flight booking. The Government is retaining the requirement for TCF membership due to uncertainties around continuity of private supply, stability of premium levels and the potential for the TCF to be forced into the position of insurer of last resort under the proposed competitive model.

Legal practice

NCP reviews have been completed and submitted in relation to Public Indemnity Insurance (PII). The Government response was forwarded to the NCC in 2001.

Victoria is currently developing new legislation, which will reform the regulatory structure for the legal profession. The reforms consist of a new regulatory structure for Victoria and national provisions developed by Standing Committee of Attorney's General (SCAG) which allow for a national legal services market. An NCP review is being conducted of the new Victorian regulatory structure. The PII provider, the Legal Practitioners Liability Committee will be re-assessed as part of that proposed NCP review. The national provisions being developed by SCAG are to be reviewed for compliance with competition policy as part of a separate process for COAG.

Trade measurement

The Scoping Paper broadly considered that restrictions on the method of sale (relating to meat, beer and spirits, and pre packaged goods) appear to have little if any adverse impact on competition but provide benefits to consumers. Concerns were raised regarding the costs of restrictions on the sale of non-prepacked meat. Other restrictions on competition were considered to be sound, imposing few costs while potentially generating widespread and significant benefits.

The costs of restrictions on the sale of non-prepacked meat have been examined through a separate Public Benefit Test. The COAG Committee for Regulatory Reform has assessed the final review documents advising that they meet NCP requirements and that they have no objection to the documents being considered by the Ministerial Council on Consumer Affairs (MCCA) for public release and further consultation.

Queensland has completed the final report on the review and will forward it to MCCA for endorsement and public release. The February 2004 election in that State has delayed the process.

This is a national review and Queensland is the lead state. Victoria must await the national response before it can implement any reforms. The Minister for Consumer Affairs in Victoria has written to his counterpart in Queensland urging the completion of this process.

The Public Benefit Test identified the need for a clear definition of meat that may include seafood and poultry, which also addresses value-added meat products. Victoria agreed to perform the review to resolve this matter. Although the report is due within 12 months, the matter requires urgent resolution and will be dealt with accordingly. The Trade Measurement Advisory Committee will be meeting in April 2004 where Victoria will present for agreement a draft Terms of Reference for the Review. If agreed, the review will commence immediately.

Victorian WorkCover Authority

Workers compensation schemes evolve with developments in workplace injuries and disease, treatment regimes, improvements in administration of benefits, and as a result of learnings across jurisdictions.

Since the PWC and MinterEllison 2000 review of the *Accident Compensation Act 1985* (the NCP Review), the Government and the Victorian WorkCover Authority (VWA) have examined ways of improving and refining claims management, premiums, return to work, impairment assessment, and most recently self insurance (on-going). However, the Government does not currently consider there is any evidence to warrant undertaking any further major reviews or reform of the legislation.

The Productivity Commission is currently examining OH&S and Workers' Compensation. Its final report could have two consequences:

- it may provide insights into where State governments can work together most effectively to improve national consistency in OH&S and Workers' Compensation; and

- it may lead to the Commonwealth Government deciding to licence private sector self insurers, and thus bear the related prudential risks.

In the absence of the final report, and an indication of the Commonwealth's response, it is unclear how this might affect Victorian Workers' Compensation legislation.

The NCP Review recommended an independent review of premiums prior to approval. The Essential Services Commission will review VWA's proposed 2004-05 premiums and advise the Minister.

The Victorian Government response to the 2000 NCP WorkCover review stated that it "may wish to consider the scope for improved market testing of some of the services provided".[3] Since then, the VWA has re-tendered for its outsourced claims management services. This major tender has increased the competitive pressures on these providers, with 30 per cent of employers changing agents, and resulting in two new overseas entrants into the Australian market. This also opened up the Australian market to third party claims administrators (that is, claims managers who are not Australian Prudential Regulation Authority insurers). This will enhance employers' choice of claims managers and improve the service for injured workers through a tighter, better managed contract. The Authority has also improved its management of providers of legal services with greater use of performance based contracts, re-tendered for actuarial services and advertising, and is examining its future IT needs. The Government does not see that there is scope for significant further outsourcing by the Authority.

Transport Accident Commission

The Victorian Government response to the 2000 NCP Compulsory Third Party (CTP) review stated that it "may wish to consider the scope for improved market testing of some of the services provided".[4] Since then, the Transport Accident Commission (TAC) has continued to carefully monitor the performance of each of its internal operations and those services provided externally.

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[3] DTF 2003, p. 119 - *National Competition Policy: Report on Victoria's Implementation of National Competition Policy*, Melbourne.

[4] Ibid. p 120.

Most recently, the TAC has retendered its internal audit, Dynamic Financial Analysis modelling, asset consulting, tax advisory, vocational assistance and community care services. Further market testing has also been completed relating to the provision of actuarial services, reinsurance, rental costs, information technology development and support and telephone services.

Only corporate regulatory functions and "core" claims management services have not been market tested. For these services, regular benchmarking of TAC services is undertaken to ensure the TAC remains efficient and effective in the internal delivery of these services.

As a result of benchmarking, the TAC has recently outsourced the provision of "person-centred planning services" for catastrophically-injured clients to community-based case managers and support for "self-purchasing" to brokerage agencies.

Residual "core" claims management services remain internally provided as the centralised TAC model has proven to be cost effective in managing liabilities and servicing clients.

In a recent examination of the management of major injury claims by the TAC, the Victorian Auditor-General concluded that 92 per cent of claimants were receiving the services and benefits they required to meet their needs and had achieved maximal recovery and independence, evidence of the effectiveness of the TAC's claims management.

Why does VWA outsource claims management, but the TAC doesn't?

As the NCC noted in its 2003 assessment, workers compensation and third party motor accident insurance share some similarities. However the Victorian schemes have some substantive product and market differences, both from each other and the schemes of other jurisdictions. These differences, along with historical factors, explain why the Government, on the advice of the Boards of its statutory insurers considers the benefits of a competitive claims management market outweigh the costs for workers compensation but not CTP.

Both workers' compensation and third party motor accident insurance in Victoria are characterised by:

- claim payments extending over a considerable period;
- a combination of statutory benefits and common law benefits;
- compulsion on those liable to hold a policy; and
- state based schemes, and thus separate state markets.

However, there are substantive differences in the products and their markets that affect how they can be most cost effectively delivered. Consequently, the Government considers that the internal claims management model of the TAC and the outsourced model of the VWA reflect those differences and best meet community needs.

An outsourced model for such a complex product as claims management requires sophisticated contract management. Where there are multiple providers, there are potentially some losses of scale economies. However, outsourcing also provides an effective choice for informed purchasers and strengthens market incentives for efficiency.

A competitive, outsourced model is currently considered appropriate for workers' compensation but not third party motor accident insurance, because the former is characterised by:

- employers (purchasers) who are comparatively informed buyers with multiple experiences with claims managers, or their representative bodies have this experience;
- return to work being a major driver of costs, increasing the value of understanding each employer's circumstances;
- a significantly larger number of claims (33,000 v 18,000); and
- the existence of 38 self insurers.

Other legislation

Consumer credit

In 1999 the Uniform Consumer Credit Code Management Committee released the national review into Uniform Consumer Credit Code (UCCC) (the Code). At the time the review was released New South Wales was chairing the Committee.

Parts 2, 3 and 10 of the Code require disclosure of particular information in credit contracts, related mortgages and guarantees, and consumer leases, respectively. Part 6 provides for civil penalties to be imposed where there are key breaches of the Credit Code in contracts. The potential anti-competitive effect is that willingness to enter the market or capacity to remain in the market could be affected by the costs of defending civil penalties cases or paying penalties. The review identified these parts as major restrictions. The options considered included deregulation, replacement of the statutory Code with a mandatory code of conduct and reform of individual provisions.

The review recommended maintaining the current provisions of the UCCC and review of the definitions in the Code to ensure that the terms of sale of land, conditional sale agreements, tiny terms contracts and solicitor lending are bought within the scope of the Code. To enhance the disclosure provisions in Part 2 of the Code, the review recommended that Regulation 13 be amended to provide a simplified pre-contractual disclosure statement format containing essential financial information.

The Ministerial Council of Consumer Affairs has accepted the recommendations in principle. Once it has agreed on specific amendments, the Code will be amended through the Queensland Parliament. The Government expects that amendments will be introduced into the Queensland Parliament in 2004. They will automatically apply in Victoria through the provision of mirroring legislation.

The Minister for Consumer Affairs in Victoria has written to his counterpart in Queensland urging the completion of this process.

Legal aid

KPMG reviewed the *Legal Aid Act 1978* in 1997.

KPMG found that the Act gives rise to potential restrictions on competition at two levels. The first level is the establishment of a single agency to provide both the organisation and distribution of legal aid funding. The second level is where Victoria Legal Aid (VLA), allocates work to itself and is not subject to competition from private practitioners.

Both VLA and the Department of Justice support or partially support seven of the review recommendations. The recommendations, which were supported, were implemented on the completion of the review. The three recommendations not supported are:

- that the policy and administrative functions associated with the organisation and distribution of legal aid services be split by establishing a separate independent advisory board to the Attorney-General;

- that section 8 of the Act be amended so that either VLA no longer has the power to allocate work to its in-house team without a tendering process or guidelines for the allocation of work; and

- that section 28 of the Act be repealed. This section provides that VLA can decide whether it or a private practitioner should provide legal assistance.

The Government considers it impractical and undesirable to separate the policy making function of VLA from its administrative function. Timely and effective legal aid policy depends on practical experience in administering grants of assistance. Separating the functions would undermine the effectiveness of VLA's policies and could increase the cost of administering grants of legal assistance.

A fundamental tenet of the rule of law is that all persons are subject to the same body of stable law. VLA helps ensure that persons who would otherwise be excluded from the justice system by reason of indigence or disadvantage are able to access the system. By doing this VLA not only helps deliver outcomes for individuals, but engenders confidence in the justice system as a whole.

Legal aid services provided by VLA include community legal education, self-represented litigants workshops, multi-lingual telephone information services and duty lawyer services, as well as casework services. These services are essential for ensuring that disadvantaged groups such as indigent and other disadvantaged members of the community (children and young people), intellectually disabled and mentally ill persons and persons from non-English speaking backgrounds, are able to achieve access to justice. Other service providers, such as the private legal profession, do not provide the full range of these services.

There are economies of scope in the provision of this suite of services and there is no equivalent organisation which can deliver the full range of services as efficiently. VLA's in-house legal practice is integral to its capacity to deliver a full range of services to disadvantaged Victorians in a targeted, strategic and holistic way.

Rules of the Council of Legal Education

Rules of the Council of Legal Education were replaced in 1999 by the *Legal Practice (Admission) Rules*.

The competition policy analysis conducted by MinterEllison Lawyers at the time examined the impact of the proposed rules on key groups and markets. The analysis found that the rules restricted competition in two ways:

- by restricting the eligibility to legal practice to those who have satisfied the admission requirements; and

- by restricting the providers of training courses for the purposes of the Rules to those entities that have been accredited or endorsed by the Council of Legal Education.

However, the analysis found that while there were restrictions on competition arising from the rules, they provide a net public benefit because they ensure an adequate standard of legal services. The Review also canvassed alternatives to the Rules. However, it was found that these alternatives may not meet the objective of an adequate minimum standard of legal services. Further, alternatives may have required that at least as high, if not higher, restrictions be imposed than those proposed under the Rules.

The analysis recommended the adoption of the Rules. The Rules came into operation on 1 January 2000. While the rules are made by the Council of Legal Education, not the Governor-in-Council, the requirements of the *Subordinate Legislation Act 1994* including the preparation of a Regulatory Impact Statement (RIS) had to be met. The RIS and competition analysis were prepared and the Office of Regulation Reform certified the appropriateness of the RIS prior to the adoption of the rules.

Trustees

Only a scoping study was completed for the *Trustee Act 1958*. The study concluded there were no restrictions on competition: in particular, the Act does not limit trustees in negotiating their remuneration with settlors.

All provisions that were considered redundant through the scoping study have been repealed.

No further action is necessary. Redundant provisions were removed by *Trustee (Amendment) Act 2001*.

Trustee companies

National Uniform legislation for trustee companies and an NCP Report are currently being finalised by jurisdictions. The *Trustee Companies Act 1984* will then be repealed. A discussion paper was released in February 2001. SCAG later approved the public release of the draft Bill and discussion paper which canvassed full options.

Following the consideration of submissions, the NCP report was prepared and was due to be considered by SCAG in March 2002. However, prior to this meeting the Commonwealth reversed its agreement in relation to Australian Prudential Regulation Authority's (APRAs) role. Consequentially, the finalisation of the report has stalled.

The Premier has since written to the Prime Minister to try and restart the negotiation. Following that letter the newly appointed Attorney-General agreed to re-consider the matter. NSW has responded on behalf of all jurisdictions to matters on which the Auditor-General requested clarification. This issue has been scheduled for the next SCAG meeting (19 March 2004), with the expectation that the Commonwealth will have a position on APRA's involvement.

14. Water

Highlights

- Victoria has continued its program of rehabilitation of stressed rivers with important gains to both flows and habitat achieved in 2003.
- The Government's Green Paper on water reform was released in 2003 and will be followed by a landmark White Paper in 2004.
- On 1 January 2004, the Essential Services Commission (ESC) became the economic regulator of the entire Victorian water sector. The ESC's role involves regulating the prices and service standards of 24 businesses supplying water, sewerage and related services to residential, industrial and commercial, and irrigation customers throughout the State.
- The $320 million Victorian Water Trust was established in 2003 to assist in securing sustainable water supplies for Victoria, and in particular to help address the need for major innovation and new approaches.

Water and wastewater pricing

The establishment of the ESC as economic regulator of the water sector, the Water Industry Regulatory Order (WIRO) and the water White Paper (to be released shortly), together provide the answers to many of the pricing issues raised in the NCC's assessment framework. Answers to specific questions are provided below.

Full cost recovery

Victoria's fifteen regional urban water authorities, four metropolitan urban water authorities and five rural water authorities are setting prices to achieve full cost recovery. The Green Paper indicated that the metropolitan urban water authorities are close to the upper bound, while the regional urban water authorities are on average slightly above the lower bound and the rural water authorities are on average around the lower bound.

The cost recovery estimates Victoria provided for the 2003 NCP assessment indicated that at June 2003 all regional urban water authorities reached the lower bound of full cost recovery.

The Green Paper also provided pricing principles going forward. These are embodied in the Water Industry Regulatory Order (the WIRO).

Consumption-based pricing – urban and rural water services

Victoria's metropolitan urban, regional urban and rural water authorities have implemented consumption-based pricing. Tariffs, which include a volumetric component, have been implemented throughout Victoria.

The pricing framework for urban water, sewerage and drainage services developed under the 2001 Price Review confirmed Victoria's commitment to the continued application of consumption-based pricing arrangements.

As demonstrated in Appendix A, rural water authorities continue to apply consumption based pricing arrangements in setting tariffs for the rural water services they deliver. The tables in Appendix A set out tariff structures for the major service from which each of these authorities derives its revenue.

Goulburn-Murray Water's tariff restructure, and its reflection of consumption-based pricing principles, is discussed in the rural pricing section of this chapter.

Asset valuation and dividend arrangements

Regulatory asset values and returns on past investments are being considered as part of the process to develop the White Paper.

Accounting policy on asset valuations and dividend arrangements are being considered in relation to the governance of water authorities. Consideration is being given to the application of the relevant accounting standard. These matters are being considered concurrently as a change in the accounting standard could impact on reported profits.

Costs of natural resource management requirements

Victoria reported on its approach to the treatment of externalities arising from urban and rural water use in its 2001, 2002 and 2003 assessment reports.

The Green Paper proposes an increase in water prices to better reflect the scarcity of water as a resource and the costs related to the environmental impacts of water-based services. The Government is considering the feedback from the submissions to the Green Paper and its response will be provided in the White Paper.

Cross subsidies

As previously reported, Victoria considers cross subsidies in the rural sector to have been removed: rural water authorities charge to recover the full costs of service delivery and set prices in consultation with their water services committees.

Similarly, Victoria considers cross subsidies in the regional urban sector to have been removed as regional urban water authorities set consumption-based prices and are achieving full cost recovery at the lower bound.

Nevertheless, the pricing principles provided in the Green Paper and the extension of the ESC's jurisdiction, on 1 January 2004, to include the water industry is expected to ensure the removal or transparent reporting of cross subsidies, should these be identified.

Community service obligations

Where service deliverers are required to provide water services to classes of customers at less than full cost this cost be fully disclosed and ideally be paid to the service deliverer as a community service obligation (CSO). Governments have agreed that the NCC would not make its own assessment of the appropriateness of any individual CSO, but would review information provided by governments in totality to ensure these CSOs do not undermine the objectives of the agreed water reform framework (clause 3a).

Victoria has previously reported that in its water industry, CSOs are limited to the provision of concessions to pensioners, rebates to certain not-for-profit organisations and payments under the rates and charges relief grant scheme. These CSOs are provided for urban water and wastewater services as well as some rural water services, and are funded by the Government in a transparent manner.

These concessions provide a public benefit as they improve the affordability of water services to low income households and certain not-for-profit organisations, such as welfare agencies, sporting agencies and charitable organisations.

Information on the value of CSOs delivered by individual water businesses is readily available from both the Department of Human Services and each business.

Victoria's water businesses report the type and value of CSOs delivered in their annual reports. The reporting of applicable CSOs by the relevant rural water authorities is outlined in the following section under "Full cost recovery".

Rural pricing and full cost recovery

Victoria has continued to implement full cost recovery for the rural sector. Most of the State's rural water services recover operational, maintenance and administration costs, finance charges and a renewals annuity. Where externalities are directly attributable to water users, and rural water authorities have incurred costs to undertake remedial works to address them, these costs are also fully recovered from rural water customers. Rural water authorities have been operating under the national tax equivalent regime since 1 July 2002.

These authorities use normalised revenues based on ten year rolling averages of sales to ensure financial self-sufficiency. While there will always be minor fluctuations between under-recovery and over-recovery from year to year due to unforeseen and seasonal variations in expenses and/or revenues, this approach ensures full cost recovery over time.

Appendix B provides information on the progress of the rural water authorities in respect of full cost recovery. The rural water authorities will develop cost recovery forecasts for 2004 as part of their annual corporate planning obligations. The review and acceptance aspects of the corporate planning process generally conclude in June. Consequently, Victoria will provide the NCC with the 2004 cost recovery forecasts for the rural water authorities, including the irrigation schemes supplied by Goulburn-Murray Water, at that time.

Several of the rural water authorities provided pensioner concessions during 2002-03. The 2002-03 annual reports of Goulburn-Murray Water and Sunraysia Rural Water, for example, report such concessions.

Irrigation tariff reform – Goulburn-Murray Water

As advised during the 2003 assessment process, Goulburn-Murray Water's irrigation tariff reform program commenced in 2001-02 with the introduction of a service fee for all irrigation services.

In 2002-03 the Authority introduced an entitlement storage fee to separately identify the costs associated with ensuring reliability of water entitlements.

During 2003-04 an additional service point fee and infrastructure access and usage fees are being introduced. This will complete Goulburn-Murray Water irrigation tariff reforms.

The restructured tariff (refer tables in Appendix A for the individual tariff components) reflects consumption-based pricing principles, as it is designed to provide a reliable

revenue stream to reduce revenue volatility and reflects the nature of costs of service provision and the way these are incurred by the Authority.

For instance, the service fee and additional service fee components are designed to recover the costs of water resource administration – including billing, debt collection and metering – and are levied on a per customer basis according to the number of service points on a customer's property.

The entitlement storage fee recovers from customers the bulk water cost attributable to their water entitlement. The infrastructure usage fee recovers the costs the Authority incurs in operating the infrastructure that delivers the service and is charged on the basis of the volume of water delivered. The infrastructure access fee recovers the costs of items such as infrastructure maintenance and renewals.

River Murray Water costs

Victoria reports the value of its estimated annual contribution to River Murray Water costs in the State Budget. The estimated contribution for 2002-03 ($21.5 million) is reported in Budget Estimates 2002-03 – Budget Paper No. 3 at page 280, under the item "Payments on behalf of the State" as "Murray-Darling Basin Contribution".

The payment is made by Victoria's Department of Sustainability and Environment on behalf of the State Government as a whole.

The Murray-Darling Basin Commission reports contributions by contracting governments in its annual report.

As advised during the 2003 NCP assessment process, Victoria determines Goulburn-Murray Water's share of Victoria's contribution of River Murray Water costs using interim principles developed for this purpose. Goulburn-Murray Water reports the value of its share to the relevant irrigators who ultimately bear this cost through their service charges.

There have not been any developments on Victoria's approach to the allocation of its share of River Murray Water costs since the 2003 NCP assessment.

Cost recovery and consumption based pricing: water licence fees

Four of Victoria's rural water authorities have a delegated licensing function under the *Water Act 1989*. Fees are set to recover costs to ensure the financial self-sufficiency of licence transactions over time.

Examples of the licence fees of these authorities for surface water and groundwater licences and transfers of water entitlements have been provided to the NCC.

Water management: water entitlements and provisions to the environment

Water Trust

The $320 million Victorian Water Trust was established in 2003 to assist in securing sustainable water supplies for Victoria and in particular, to help address the need for major innovation and new approaches. The purpose of the Trust includes:

- enhancing the health and sustainability of the water resources of Victoria, including rivers;

- providing greater security for meeting the future water needs of Victorians;
- encouraging the increased re-use and recycling of water in Victoria; and
- improving efficiencies in the use of water across Victoria.

The Trust will support programs that will deliver on four Government targets designed to increase the efficiency of irrigation systems, reduce drinking water use in Melbourne, increase the ecological health of Victoria's rivers and increase recycling of Melbourne's 'waste' water.

River health plans

The Victorian River Health Strategy provides the framework by which government in partnership with the community can make decisions on the management and restoration of rivers. A key commitment is that CMAs will develop regional river health strategies.

Four of the ten CMAs will have draft river health strategies to their communities for comment by the end of March 2004. A status report is provided in Appendix C. Delays have been experienced because the Catchment Management Authorities (CMAs) have been in the process of reviewing their Regional Catchment Strategies (RCSs). This has dictated, to a large extent, the process and timing of the development of the river health strategies.

Bulk entitlements

The bulk entitlement (BE) program has reached the stage where flow sharing arrangements for approximately 88 per cent of the State's total water resources have been negotiated and agreed with stakeholders.

Under the program, 142 individual bulk entitlements, grouped under the 17 broader supply systems listed in Table C.1 of Appendix C, have now been granted to authorities and the environment.

A number of individual BEs were completed during 2003. These include a BE for the Maribyrnong supply system completed during September 2003. In December 2003, individual BEs were also completed for the Amphitheatre, Avoca, Landsborough, Navarre and Redbank urban supplies, which are part of the Central Highlands supply system.

Of the major water supply systems outstanding, negotiations are complete on the Ovens and Broken Systems and applications from relevant water authorities have been requested. The proposed Wimmera-Mallee BEs have been quantified and the few remaining issues are close to finalisation.

The two remaining major systems are the Loddon and Melbourne's supply system. Work is progressing on the Loddon System. The work to define the BEs for the Melbourne System has largely been completed but will not be finalised until policy decisions are resolved. This matter is linked to water reforms now under review by the Government.

With the exception of a number of minor systems, all remaining BEs should be granted by the end of 2004.

Water entitlements registry

Under the legislative framework of the *Water Act 1989*, Victoria has established a program to convert the existing rights of water authorities to clearly defined bulk entitlements that provide the basis for sharing resources between water authorities and the environment. In

rural water systems that supply water for irrigation, the water rights of individuals are aggregated under bulk entitlements held by rural water authorities.

The Victorian water allocation arrangements provide a comprehensive system of property rights to enable the trading of surface water entitlements. Registry systems have been established to record and monitor changes to entitlements. At the bulk level, the Department of Sustainability and Environment maintains a register of all bulk entitlements held by water authorities, power companies and the environment. This information is publicly available.

Rural water authorities are required to maintain registers of all holders of water right entitlements in irrigation districts and all individuals who are licensed to divert from rivers and streams. Rural water authorities also maintain registers of use from farm dams used for irrigation or commercial purposes.

Water for the environment

Victoria is committed to providing water for the environment through the water allocation framework. This is described in detail in Chapter 6 of the Victorian River Health Strategy. In addition, proposals for the evolution of the current environmental flow provisions to an environmental reserve managed by an environmental manager are currently under consideration in the development of the Government's White Paper.

Provision of water for the environment through the program continues to be successful because the negotiation between stakeholders, undertaken as part of the BE conversion process, ensures that environmental managers, irrigators, water businesses and other groups have been consulted and accept the outcomes before the entitlement is finalised. There is recognition by the irrigators of their dependence on healthy rivers to sustain their businesses and therefore, of the need to provide water for the environment.

Streamflow management plans

On unregulated rivers, not covered under the bulk entitlement program, the management of diversions is being undertaken according to a risk-based management framework. High risk river systems require the development and implementation of Streamflow Management Plans (SFMPs). SFMPs establish environmental objectives, immediate and, where necessary, long-term environmental flow provisions, mechanisms to achieve long-term environmental flow provisions, rostering rules, trading rules and rules covering the granting of any new licences. Following the amendment of the *Water Act 1989* in 2002, SFMPs must be prepared as statutory management plans. This brings SFMPs under the same legislative arrangements as groundwater management plans (GMPs).

Victoria has now developed a standard procedure for undertaking SFMPs to improve the rate of progress of developing SFMPs. This procedure provides clear guidelines to assist Consultative Committees prepare SFMPs more efficiently. Agreement on initial flow and target periods to reach the full environmental flows are key required outcomes.

Medium to low risk river systems are being managed according to a set of statewide rules covering licensing limitations, rostering, trading, monitoring and compliance requirements.

Implementing this risk-based approach has been made possible by the development of a significant new tool in water allocation – the winter Sustainable Diversion Limits (SDLs). SDLs specify a limit for winter diversions and an allowable rate of extraction for each catchment and subcatchment. The specification of SDLs is based on an analysis of the hydrology of the system. SDLs are a conservative estimate of how much water can be extracted from these systems during winter with minimum environmental impact.

With the introduction of SDLs, it may be possible to achieve the same environmental outcomes in some stream systems more efficiently with management rules rather than a full SFMP. Given this, and within the general approach outlined above, Victoria is now reviewing and refining the work program for developing and implementing SFMPs as part of the White Paper process.

Groundwater Management Plans

Victoria has continued to implement GMPs. To date, 23 Water Supply Protection Areas have been established. Nine GMPs are approved. Fourteen plans are under preparation.

Over the next three years, one Water Supply Protection Area will be established for Murmungee and the development of a management plan for this area will commence.

Progress against the agreed second tranche implementation program for BEs and GMPs is set out in Appendix C.

Technical Audit Panel

The Technical Audit Panel established in October 2002 has met twice and has begun a program of reviewing the GMPs and SFMPs that have been prepared or are being prepared across Victoria. Draft SFMPs have been reviewed for the Upper Wimmera, Upper Ovens, Plenty, Hoddles, Upper Maribyrnong, Avon and one GMP (Warrion) has been reviewed.

The panel consists of seven academic experts in the fields of hydrology, ecology, fluvial geomorphology and hydrogeology. The main purpose of its reviews is to answer two fundamental questions: was the information and methodology used the best available at the time and has the assessment of risks (to the environment and to security of supply) been properly done?

Farm Dams Review

As indicated in Victoria's 2003 report, the *Water Act 1989* was amended in 2002 to extend existing licensing requirements for dams on waterways to cover all new irrigation and commercial use in the catchment. All existing unlicensed irrigation or commercial dams had to be licensed or registered by 30 June 2003.

Applications to register some 17 000 irrigation and commercial dams were made by the closing date of 30 June 2003. This indicates that these dams were, and are, having a significant impact on the State's water resources. Guidelines are also proposed for 2004-05 to cover statutory planning and "sustainable diversion limits".

Water entitlements – specific matters

Water entitlements – link to land

Victoria's progress in respect of this matter is discussed in the following sections of this chapter under:

- water trading – constraints on trade in Victoria; and
- water legislation review – actions concerning the links between the ownership of water and the ownership of land.

This approach recognises that the matter has been raised both as a constraint on trade and as a legislative restriction requiring reform.

Sunraysia Rural Water's review of tenure

As Victoria reported in 2002, the most significant reason for Sunraysia Rural Water's change to the terms of private diverters' licences was the need for greater flexibility in the management of environmental issues, particularly in the areas of drainage and salinity mitigation.

The issue of dealing with the environmental impacts of irrigation has been canvassed through the Green Paper process. The Government will consider feedback received in submissions to the Green Paper and provide its response to this matter in the White Paper.

Provision of water for the environment

Stressed Rivers Work Program

As part of the 2001 assessment, Victoria and the NCC agreed to a three-year stressed rivers work program. The work program outlines actions to be undertaken on the eight priority stressed rivers as well as the Macalister, Wimmera and Snowy rivers. For the 2004 assessment, the NCC requested Victoria to report on progress with the flow rehabilitation strategies for the Avoca, Broken, Glenelg, Loddon, Snowy and Wimmera Rivers.

Victoria's program for rehabilitating stressed rives is an integrated one aimed at achieving ecological health, maintaining high value river assets and managing river threats. Within this program, the provision and management of environmental flows is considered not as an endpoint in itself but as one key aspect which is integrated with the management of other key processes to achieve real and measurable improvements in river health.

The following progress has been achieved on the priority stressed rivers both on flow improvement initiatives and river health and habitat improvement.

Loddon River

The environmental flow assessment identified the need, as a priority, to review the minimum flows and provisions for fresher flows. Currently, the impact of supplying the recommended environmental flows on security of supply is being modelled as part of the BE conversion process. It is anticipated that the BE will provide substantial improvements in the environmental condition of the Loddon and the lakes and that a number of the environmental flow recommendations should be able to be met through the bulk entitlement process.

It was initially considered that an SFMP may be required to protect streamflows in the upper catchment and provide adequate environmental flows. It is now appears possible that the same outcomes can be achieved through statewide/regional management rules, as indicated in the Victorian River Health Strategy. This is now being considered in a review of Victoria's final approach and work program for SFMPs as part of the White Paper process.

A draft river health strategy for the Loddon River has been completed. Additional funding has been provided from the Stressed River initiative to implement this integrated river health plan. The project aims to maximise the environmental benefits of the anticipated flow improvements provided through the BE process. It also addresses the many river health issues associated with the lower Loddon River, which may constrain the river health benefits of any flow improvements.

In addition, a fishway for Kerang Weir has been designed and will be constructed within the next 12 months, providing fish passage through the river up to Loddon Weir. The water quality plan for the Avoca has been completed and is now being implemented.

Additional work is being undertaken to identify options for management of the wetlands associated with the Loddon River. Risk analysis and assessment have now been completed for the 105 wetlands in the Loddon-Murray region. An initial first-cut of 36 priority wetlands has been produced. The next phase will be the development of management options with a strong focus on community involvement.

Broken River

The environmental flow assessment has been completed. The BE is currently being finalised. The environmental flow recommendations have been met and are being implemented.

Additional funding has been provided through the Victorian Water Trust to accelerate progress towards achieving improved ecological health of the Broken River. This is focusing on: benchmarking river health; water quality improvements; protection and enhancement of riparian and floodplain vegetation and associated values; ensuring ongoing protection of frontages and riparian lands; creation of significantly enhanced aquatic refugia; management of recreational fishing; increasing the length of stream accessible by native fish species and flagship species; and building community capacity.

In addition, fish passage has been provided at the following weirs on the Broken Creek – Benalla, Rice's, Kennedy's and Shier's. Investigations are taking place into providing fish passage or weir removal at Gowangardie and Holland's Weir. However, this will dependent on the outcome of the Review of Lake Mokoan.

Wimmera and Glenelg Rivers

The environmental flow assessments for both rivers have been completed.

34,690 ML of water savings from the Northern Mallee pipeline has already been made available for environmental flows to be shared between the Wimmera and Glenelg rivers. In addition, the State Government has committed $77 million to the building of the Wimmera Mallee Pipeline. Victoria is seeking a partnership approach with the Commonwealth Government on this project, similar to the Northern Mallee pipeline. The two pipeline projects will save and return to the Wimmera and Glenelg River systems in the order of 100 000 - 120 000 ML of water.

The expectation is this quantum of water will meet most of the environmental flows recommended for the two rivers.

The BE process for the two rivers will be completed by June 2004. It will provide a specific BE for the environment.

Additional funding has been provided from the Stressed River Initiative to the Glenelg-Hopkins Catchment Management Authority to plan for the increase in environmental provisions that are expected to result from the Wimmera pipeline and maximise the effectiveness of the improved flow provisions. An integrated Wimmera/Glenelg Operating Strategy for the environmental BE will be developed as well as a specific Glenelg environmental flow plan. Work will also be undertaken to address sand and other issues in the Glenelg which may constrain the benefits of additional flow. In addition, funds have been provided to assess the ability of Huddleston's Weir in the Wimmera system to pass environmental flows.

Avoca River

The environmental flow assessment for the Avoca River has been completed. It has found that flows have not been significantly impacted in the Avoca River and that therefore the

flow requirements will be met. This will be assisted by the provision of an additional estimated 1500ML to be provided through water savings realised through the Wimmera-Mallee pipeline.

It was planned to manage streamflows in the Avoca River through a Streamflow Management Plan. However, given that the impact of extraction is less than first thought, it now appears possible that the same outcomes can be achieved through statewide/regional management rules, as indicated in the Victorian River Health Strategy. This is now being considered in a review of Victoria's final approach and work program for SFMPs as part of the White Paper process.

A study is being undertaken to investigate management options to improve the watering regime of the terminal lakes of the Avoca system. The watering regimes of these wetlands have been impacted by a range of factors including groundwater management and the construction of levee banks. The study has established the hydrology of the system, is currently assessing vegetation and groundwater linkages. A draft report covering possible management options, including management of the levee banks, will be available in August 2004.

A draft river health strategy for the Avoca River has been completed and is currently being integrated into a set of regional priorities for river protection and restoration. The water quality plan for the Avoca has been endorsed and is being implemented.

Snowy River

The Snowy Rescue Plan will return 21 per cent of the flow (212 000 ML) to the river over 10 years. This is a joint initiative between the Victorian, New South Wales and Commonwealth Governments. A Joint Government Enterprise has been established and a range of water savings projects have been identified and are underway.

This is complemented by a Lower Snowy River Rehabilitation Plan which aims to return crucial instream and riparian habitat features to the Lower Snowy River over ten years. Currently, a physical model is being developed to test the likely impact of introducing large woody debris structures to the river.

Water trading

Victoria has a well established water market with water trading continuing to play an important role in agricultural production. Water trading activity in Victoria occurs within the framework outlined in *The Value of Water: A Guide to Water Trading in Victoria*, which was provided to the NCC for the 2003 NCP assessment.

Current trading rules and zones

The rules applying to trade within regulated rivers and supply systems are set out in table 6 (pages 48-50), Chapter 7 of *The Value of Water*. In broad terms, the rules are designed to minimise adverse effects of trade on other water users and the environment. Map 5, inside the back cover, depicts the zones.

The rules applying to trade into and out of Victoria are discussed in Chapter 9 of *The Value of Water* (pages 67-72). In summary, the current rules allow holders of licences and water rights on the Murray below Nyah to trade permanently and holders of licences and water rights anywhere in the Murray, Goulburn and Campaspe systems to trade temporarily – but not into New South Wales after February. The February cut off was a means of preventing trade distortions resulting from the divergent carryover policies of New South Wales and Victoria.

Legislative and institutional arrangements

Legislative provisions applying to intrastate trade are described in Attachment 2, "Key legal and regulatory provisions" (pages 102 –104) of *The Value of Water*. The main institutional arrangements are described in Chapter 6, particularly the sections on "Approval processes" and "Preventing fraud".

Legislative provisions applying to interstate trade are described in Attachment 2 of *The Value of Water*. Institutional arrangements, including adjustment of State water resources and financial obligations, are outlined in Chapter 9 of *The Value of Water*.

The mechanisms in place to avoid adverse environmental impacts from trade on river and groundwater health

Controls on trading that take into account physical connections, and related matters like water quality and differential reliabilities, are designed to safeguard both river health and water users. These controls are set out and explained in Chapter 7 of *The Value of Water*.

In unregulated systems, adverse effects can result from moving an entitlement from one location to another. Transfers require careful assessment in view of the individual circumstances. These controls, set out in the Chapter 8 of *The Value of Water*, are designed to safeguard the health of the stream and protect water availability to downstream users.

GMPs include controls on transfers of allocations that are designed to ensure careful management of the resource. It is common practice for groundwater protection areas to be divided into zones reflecting the extent of draw down that may occur if bores in each zone were to pump their licence volume.

GMP specific controls may include:

- temporary trading restrictions designed to prevent "sleeper licences" being activated by trading (where a licence to extract has been issued but the holder is not currently extracting);

- constraints restricting permanent transfers into particular zones that may be overallocated or overused, or into the whole groundwater management area if it was allocated above the sustainable limit; and

- constraints on temporary transfers where a water shortage is declared under section 13 of the *Water Act 1989*.

Recent trade

In general, the nature of trade is similar to previous years, as documented in *The Value of Water*, except that there has been a surge of trade out of the operating districts to new horticultural developments between Swan Hill and Robinvale. This has been caused by the cumulative financial effects of the worst recorded drought on the Goulburn and movements in exchange rates which have reduced the profitability the dairy industry. The 2 per cent annual limit has been reached for this year and next for Pyramid-Boort and for this year for Rochester. The price of water has increased by about 50 per cent to around $1 200 a megalitre. On the temporary market, the Goulburn price rose to an unprecedented $500 a megalitre at the height of the drought in 2002-03 and is currently trading at around $60 a megalitre.

Constraints on trade in Victoria

The trading constraints that operate in Victoria relate to:

- the links between the ownership of water and the ownership of land;
- the differential rates of return on bulk supplies to regional urban and rural users;
- the application of the 2 per cent trading rule; and
- the trade in unregulated streams.

The latter two constraints are a consequence of the trading rules applying to trade in regulated and unregulated systems, which in broad terms, are designed to minimise environmental damage and impacts on downstream water users.

The requirements for water rights to attach to land and the application of the 2 per cent trading cap have been canvassed through the Green Paper. The Government will consider feedback in the Green Paper submissions and respond to these matters in the White Paper, to be released in the first half of 2004.

The differential rate of return on bulk water sales has been identified in the Green Paper as an issue that the Government will address.

The trading rules in streamflow and groundwater management plans

The SFMPs that have been completed tend to confirm the interim, general trading rules discussed in Chapter 8 of *The Value of Water*. This partly reflects the fact that these plans have been prepared for streams that are stressed and it is important that trading does not further impact on stream health. Consequently, some of the plans pose additional constraints on trade.

Similarly, the GMPs include constraints that result from zoning and the introduction of controls on transfers between zones to ensure that groundwater use is managed within sustainable limits.

The SFMPs for Diamond Creek and Hoddles Creek and the GMPs for the Katunga and Murrayville Water Supply Protection Areas are provided in the Stream Plans for these waterways. These provide a representative sample of the general trading rules that operate in relation to water supply protection areas for unregulated streams and groundwater.

Intentions on trading constraints in unregulated rivers once streamflow management plans have been completed

Under Victoria's risk-based approach to the management of its unregulated systems, unregulated streams are classified into three management priority categories – high, medium and low. Streams with a high environmental value and a high value of risk are given the highest level of management effort – the development of a SFMP. Streams categorised as medium or low are managed in accordance with Statewide Rules covering a range of matters including trading. Under these rules, trade of summer licences must be downstream and trade of winter licences occurs only within sustainable diversion limits.

The objective of an SFMP is to establish a water sharing plan for the management of diversions on an unregulated stream. It provides water users with agreed levels of security

under various climatic conditions and it provides the environmental flow regime needed to maintain the ecology of the stream.

There is a requirement that the environmental flows will be improved over the planning period with the aim of ultimately providing the full environmental flow requirements. To this end, a SFMP includes trading rules that support the environmental flow objectives of the plan.

In view of the need to achieve the environmental objectives established for SFMPs, it is not Victoria's intention to remove or loosen the trading rules as they are an essential tool to ensure that trading does not cause the ecology of the stream to deteriorate.

The continuing need for the ban on late-season temporary transfers into New South Wales

The reasons for this rule are explained on pages 71-72 of *The Value of Water*, and have not changed.

Institutional reform

Structural separation

Economic regulation of the water industry

On 1 January 2004 the ESC became the economic regulator of the Victorian water industry. The *Water Industry Act 1994* as amended by the *Water Industry (Essential Services Commission and other Amendments) Act 2003* establishes the broad framework for the regulation of the water industry by the ESC. The regulatory framework includes the WIRO and Statements of Obligations (the Statements).

The Water Industry Regulatory Order

The WIRO specifies the framework for ESC regulation of the water industry by:

- prescribing the services for which the ESC has the power to regulate prices and service quality;
- specifying the regulatory approach the ESC must adopt and other matters to which it must have regard in regulating prices; and
- conferring certain functions on the ESC in relation to regulating service quality.

Statements of Obligations

The Statements will clarify the Government's expectations of its water authorities as service providers. Such clarity is important with the move to independent economic regulation.

Significantly, service standards (other than for drinking water quality) will be set and monitored by the ESC (with customer input, particularly in the case of rural service standards) – not by the authorities.

Statements will be issued to all of Victoria's 24 water authorities in the metropolitan urban, regional urban and rural water sectors. The Statements will provide a common means of spelling out obligations. A copy of the generic Statement setting out a core suite of

obligations relevant to the range of services provided by the water industry has been provided to the NCC.

The Statements of individual authorities will be customised, as necessary, to reflect their particular business and the services they provide. Not all of the obligations will be relevant to all authorities.

It is proposed to issue the Statements during March 2004.

Drinking Water Quality Regulator

On 1 July 2004, a new regulatory framework for drinking water quality will come into operation. Drinking water quality standards will be set by regulation after a cost/benefit analysis. Under the new framework, urban water authorities that supply drinking water to the public will be required to develop and implement an integrated risk management framework for drinking water quality, comply with standards for water quality, communicate effectively with all stakeholders and publicly disclose relevant water quality information.

The new framework will also require the Melbourne Water Corporation and the rural water authorities, to the extent that they supply water to an urban water authority, to prepare and implement management plans in relation to water supplied to urban water authorities.

Education and consultation

The Victorian Government is committed to transparent and open processes involving community consultation and education. There have been significant consultative programs and communication strategies accompanying each of its major reform initiatives. These programs ensure that stakeholders are engaged in the development and implementation of reform initiatives and that public debate and understanding of issues is achieved.

Public consultation

Victoria addresses its commitments to public consultation through:

- the extensive consultation program put in place for the Government's major review through a Green Paper of all areas of the water industry;

- the community and stakeholder consultation that continues to be a feature of the development and implementation of BEs, SFMPs, GMPs, river health plans and other natural resource management programs;

- customer consultation obligations placed on urban water businesses through operating licences and water services agreements, which ensure that these businesses engage with the customers and communities they impact upon regarding services to be provided; and

- water services committees established by rural water authorities, which ensure that these authorities engage with their customers in relation to the management and provision of rural services.

The most significant and wide-ranging consultation initiative undertaken in Victoria during 2002-03 related to the major review of the management of the State's resources. On 27 August 2003, the Government released a Green Paper (*Securing Our Water Future*). The Paper identifies over 80 potential proposals to create a more sustainable water future for all Victorians.

An extensive community consultation program was a key feature of the Green Paper process. Community consultation was undertaken through a series of public forums held in regional and metropolitan centres during October and November 2003.

The forums were open for anyone to attend and were designed to:

- provide information on each of the proposals;
- allow direct community input into the Green Paper process; and
- provide information on how anyone can make a submission to Government.

The Department of Sustainability and Environment managed the consultation program on behalf of the Government. The Water Review Expert Advisory Taskforce also played a key role in facilitating the forums.

In all, over 10 000 copies of the Green Paper were released and some 2 500 people attended the public forums and other meetings arranged to discuss the Green Paper. More than 660 submissions were received. The Government is using these to determine priorities for the future management of water. These will be announced through the White Paper.

Extensive stakeholder and community engagement is required to ensure the successful development of BEs, SFMPs, GMPs, river health plans and other integrated natural resource management programs. Victoria is committed to ongoing consultation on these initiatives to improve public awareness and ensure that the full benefits of the reforms are understood and achieved by facilitating stakeholder input into the programs.

Education

Victoria has met its commitments to public education though the Our Water Our Future campaign. The campaign aims to raise community awareness that “water is precious” into a personal mission to save water. A key objective of the campaign is to achieve behavioural change in a way that helps to achieve the Government’s targets to reduce drinking water consumption in Melbourne by 15 per cent by 2010 and recycle 20 per cent of Melbourne’s waste water by 2010.

Key features of the initiative are to:

- continually raise community awareness and reinforce the need for water conservation;
- ensure Melburnians have information on how they can make water savings;
- empower Melburnians to make the necessary behavioural changes;
- provide feedback on the outcome of water savings efforts; and
- ensure a long term commitment to water conservation.

The campaign, with its core message of “Be a Water Saver”, is primarily aimed at water users in the Melbourne metropolitan area. A range of integrated communication tools is being used. These include:

- press, outdoor, radio and television advertisements;
- public relations activities;

- water kits including water initiatives booklet and a water tips wheel and brochure, as well as a free flow shower flow control valve for the first 50 000 kits ordered;

- community consultation;

- curriculum package for Victorian schools; and

- a website (www.ourwater.vic.gov.au) featuring promotions and profiles of water saving topics.

Victoria's water management agencies, including rural and urban water authorities and catchment management authorities, recognise that a key to meaningful consultation with communities is a range of communication and education activities. These activities include the investment in resources:

- targeting the formal education and training sector (for example, curriculum based schools materials such as Water.Learn it! Live it!);

- ensuring accessibility of local water information (for example, web-based data on www.vicwaterdata.net or www.savewater.com);

- mass media/communication campaigns (for example, range of water conservation campaigns), and

- general awareness-raising events (for example, National Water Week).

The focus of much of the activity has been the sustainable use of water for a whole catchment. Programs such as Waterwatch, that are hosted and sponsored by a range of government agencies, provide opportunities for education and training which encourage community participation in major local water planning and decision making processes.

Improved understanding of water conservation also continues to be addressed through a variety of public education programs, including National Water Week and Waterwatch.

In addition, the Victorian Water Industry Association is assisting in making educational material available to Victorian schools by cataloguing information developed and held by Victorian water businesses. The VicWater education site on the Association's website provides information on matters related to water and water conservation.

The education site provides access to:

- the Water and Curriculum Standards Framework which outlines ways in which water can be used in various key learning areas within the Framework;

- resources, by providing access to a list of all available resources from each of Victoria's water businesses; and

- the online education sites of Victoria's water businesses and links to sites that provide useful information regarding the curriculum or education sites of water related organisations.

Water legislation review

ESC

As stated earlier in this chapter, the ESC assumed responsibility for the economic regulation of the water industry on 1 January 2004, consistent with the provisions of the *Water Industry (Essential Services Commission and other Amendments) Act 2003*.

Vetted competition and the access regime

Future arrangements in respect of these matters are being considered as part of the process to finalise the White Paper.

Links between the ownership of water and the ownership of land

The issue of removing links between the ownership of land and the ownership of water has been canvassed in the Green Paper in the context of proposals to:

- investigate the impact of unbundling water entitlements into their three main components of a water share, a share of delivery capacity and a site use licence; and
- seek feedback on the merits of two unbundling options – full unbundling and a halfway solution of retaining some requirement to hold land.

The Government will consider feedback received in submissions to the Green Paper and provide its response to these matters in the White Paper.

Structural change

The issue of managing structural change in relation to the 2 per cent trading rule has been canvassed in the Green Paper in the context of a commitment by Government to consider, together with rural water authorities, if any modifications to Victoria's trading regime are required to take better account of financial and social impacts. In particular, it will consider whether distribution charges should be tied to land.

The Government will consider feedback received in submissions to the Green Paper and provide its response to this matter in the White Paper.

Rate of return

In the Green Paper, the Government committed to review and put in place arrangements to address the differential rates of return on bulk supplies to regional and rural users. This matter will be addressed through the White Paper.

Compulsory sewerage connection and by-laws

Legislative proposals have been developed, for possible introduction in the Spring Sitting of Parliament 2004, to implement proposals for compulsory sewerage connection and the introduction of public scrutiny to the by-law making process.

Legislative framework

Opportunities to improve the current legislation governing Victoria's water sector are being considered through the White Paper process.

Appendix A

Tariff Structure

Rural Water Authorities

Tariff structures are set out for the major service from which each of the rural water authorities derives its revenue.

First Mildura Irrigation Trust

Irrigation tariff components	Nature of component
Access fee	Fixed
Bulk water charge	Fixed
Delivery fee	Variable
Drainage fee	Variable

Gippsland and Southern Rural Water Authority

The Authority applies a single volumetric charge for each of its irrigation districts.

Goulburn-Murray Rural Water Authority

Irrigation tariff components	Nature of component
Service fee	Fixed
Entitlement storage fee	Fixed
Infrastructure access fee	Fixed
Infrastructure usage fee	Variable
Additional service point fee	Variable

Sunraysia Rural Water Authority

Irrigation tariff components	Nature of component
Access fee	Fixed
Bulk water charge	Fixed
Drainage and salinity fee	Variable

Wimmera Mallee Rural Water Authority

Domestic and stock tariff components	Nature of component
Access charge	Fixed
Damfill fee	Variable

Appendix B

Table B1 Full Cost Recovery in the rural sector – June 2003

	First Mildura Irrigation Trust	Gippsland and Southern	Goulburn Murray	Sunraysia	Wimmera Mallee
			$ 000s		
Revenue					
Bulk, service and usage	4,782	16,720	63,467	12,140	12,258
Other	878	1,768	32,619	1,641	7,333
	5,660	**18,488**	**96,086**	**13,781**	**19,591**
Expenses					
Operations, maintenance and administration	4,349	16,480	85,438	9,311	9,857
Finance charges	0	0	200	0	0
Other	131	905	3,569	556	3,343
Renewals Annuity	987	2,145	14,569	2,471	3,455
	5,467	**19,530**	**103,776**	**12,338**	**16,655**
Surplus/Deficit	193	-1,042	-7,690	1,443	2,936

Source: Department of Sustainability and Environment

Notes: Gippsland and Southern – consistent with its policy regarding the recognition of assets, and capitalisation of major works, much of the Authority's spending on asset replacement is reported as maintenance. Under this policy, the Authority's expenses include $1.568 million of major works expensed. When this is accounted for, the operating result is a surplus of $.526 million.

Goulburn-Murray – the Authority's results reflect the impact of the sixth consecutive year of drought, which proved to be the worst in terms of financial impact. The above deficit reflects reduced sales revenue as low water availability restricted allocations on the Murray and Goulburn Systems, a significant fall in revenue for assets received free of charge and increased operations costs.

Wimmera Mallee – the Authority's revenue includes the proceeds from a one-off sale of water entitlement to be used for funding future capital works ($5 million) and its expenses include channel assets abandoned due to the Northern Mallee and Wimmera Mallee pipeline projects ($2.405 million). When the net effect of this ($2.595 million) is taken into account, the Authority's adjusted surplus becomes $.341 million.

Appendix C

Progress on Agreed Second Tranche Implementation Program

Water Allocation and Trading Framework

Bulk Entitlement Program

Table C1 Bulk Entitlements finalised and granted

Supply System	Comment
Melbourne	Process complete. Awaiting resolution of policy matter by Government.
Tarago System	Closely tied to Melbourne system and subject to resolution of above policy matter.
Ovens	Negotiation complete. Awaiting applications from relevant water authorities.
Broken	Negotiation complete. Awaiting applications from relevant water authorities.
Wimmera-Mallee	Final stages of negotiation.
Grampians urbans	Part of Wimmera-Mallee process.
Loddon	Work progressing.

Table C2 Bulk Entitlements commenced but not finalised

Supply System	Comment
Melbourne	Process complete. Awaiting resolution of policy matter by Government.
Tarago System	Closely tied to Melbourne system and subject to resolution of above policy matter.
Ovens	Negotiation complete. Awaiting applications from relevant water authorities.
Broken	Negotiation complete. Awaiting applications from relevant water authorities.
Wimmera-Mallee	Final stages of negotiation.
Grampians urbans	Part of Wimmera-Mallee process.
Loddon	Work progressing.

Management of Stressed Rivers

Regional River Health Strategies

Table C3: Status Report Regional River Health Strategies – February 2004.

Region	Current Status	
	Regional Catchment Strategy	Regional River Health Strategy
Corangamite	Accredited	Draft near completion. Release of draft for public comment expected May 04
East Gippsland	First draft accreditation completed	Public Draft Competed, 2002. Re-release of Draft for key stakeholder comment scheduled for April 04
Glenelg Hopkins	First accredited Integrated Natural Resource Management plan in Australia	Draft released for public Comment Feb 04
Goulburn Broken	Accredited	Draft near completion. Release of draft for public comment expected March 04
Mallee	Accredited	Draft underway. Release of draft for public comment expected late June 04
North Central	Accredited	Draft underway. Release of draft for public comment expected late May 04
North East	Second draft submitted	Draft underway. Release of draft for public comment expected late June 04
Port Phillip	First draft accreditation completed	Draft near completion. Release of draft for public comment expected June 04 due to requirement for CMA and Melbourne Water sign-off
West Gippsland	Second draft submitted	Draft near completion. Release of draft for public comment expected late March 04.
Wimmera	Accredited	Draft underway. Release of draft for public comment expected late June 04.

Groundwater Management

Groundwater Management Plans

When allocations reach 70 per cent of Permissible Annual Volume (PAV), a mechanism to establish a Groundwater Supply Protection Area (GSPA) is triggered and a Groundwater Management Plan developed. A consultative committee, comprised mainly of farmers but representing all relevant interests, is responsible for developing the management plan. The management plan must address issues such as metering and monitoring, allocation arrangements including transferable water entitlements, and costs associated with implementing the plan.

Progress to date

Progress against the agreed second tranche implementation program and revised targets and timetables is set out in Table C4.

Table C4: Declared Groundwater Supply Protection Areas

Groundwater Supply Protection Areas	Declared	Consultative Committee	Management Plan (Target)	Current Status	Revised Targets
Completed					
Koo Wee Rup – Dalmore	Long established	Task completed	In place	Completed	NA
Shepparton Irrigation Area	Sept 1985	Task completed	In place	Completed	NA
Murrayville	Dec 1998	Task completed	In place	Completed	NA
Neuarpur	Feb 1999	Task completed	In place	Completed	NA
Yangery	Feb 1999	Task completed	In place	Completed	NA
Nullawarre	Feb 1999	Task completed	In place	Completed	NA
Spring Hill	Dec 1998	Task completed	In place	Completed	NA
Katunga	Dec 1998	Task completed	In place	Completed	NA
Campaspe	Dec 1998	Task completed	In place	Completed	NA

Groundwater Supply Protection Areas	Declared	Consultative Committee	Management Plan (Target)	Current Status	Revised Targets
Underway					
Denison	Nov 1998	Established	Dec 2001	Draft plan submitted to Minister for approval	Jun 2004
Sale	Apr 1999	Established	Dec 2001	Draft plan submitted to Minister for approval	Jun 2005
Wy Yung	May 1999	Established	Dec 2001	Draft plan submitted to Minister for approval	Jun 2004
Deutgam	Jan 2000	Established	Dec 2002	Draft plan submitted to Minister for approval d	Jun 2005
Warrion	Aug 2000	Established	Dec 2002	Draft plan submitted to Minister for approval	Jun 2004
Telopea Downs	Jan 2001	Established	Jun 2003	Draft plan	Jun 2004
Condah	June 2001	Established	Jun 2003	Draft plan	Dec 2004
Bungaree	Apr 2001	Established	Jun 2003	Draft plan	Dec 2004
Wandin Yallock	Apr 2001	Established	Jun 2003	Draft plan	Dec 2004
Apsley	Oct 2001	To be established	Jun 2004	Committee being established	Dec 2005
Upper Loddon	Mar 2003	To be established	Jun 2004	Committee being established	Dec 2005
Mid Loddon	Sep 2003	To be established	Jun 2004	Committee being established	Dec 2005
Yarram	Nov 2002	To be established	Jun 2004	Committee being established	Dec 2005
Kaniva	Feb 2004	To be established	Jun 2006	Committee being established	NA
Lake Mundi	In progress	To be established	Jun 2006	Minister’s declaration sought	NA

Source: Department of Sustainability and Environment

Part B: Legislation review tables

Table 1: Review and reform complete

Extractive Industries

Legislation:	***Extractive Industries Development Act 1995***	**Portfolio:**	Resources
Reviewer:	Consultant: Peter Day Consulting	**Date Review Completed:**	July 2002
Consultation:	Issues paper publicly released. Call for submissions	**Date Response Released:**	February 2003

No	Review Recommendation	Response	Implementation
1	That the Act be amended to allow the Minister to approve a work plan and to set conditions.	Not accepted. The work plan approval is a technical matter that is more appropriately approved by the Department Head. There is no improvement in efficiency or fairness to be gained by the proposed change recommended by the Review.	Department Head to approve work plan.
2	That conditions be appealable by applicants to the Victorian Civil and Administrative Tribunal (VCAT).	Accepted	Incorporated in the *Extractive Industries Development (Amendment) Act 2003*.
3	That parameters be prescribed in regulation beyond which a variation of a work plan should be made.	Not accepted. There are a number of reasons why a work plan may need to be amended, and these will vary according to the particular circumstances at the time. The need to vary a work plan requires administrative judgment, and to place these parameters in regulations would be too restrictive. The Department of Primary Industries (DPI) will prepare guidelines outlining what determines the need to vary a work plan.	Variations required to be assessed on case-by-case basis. Guidelines for determining the need to vary a workplan to be developed by Department in 2005.

No	Review Recommendation	Response	Implementation
4	That the process be simplified by reducing to one these approvals. This can be done by abolishing the work authority and relying on the Work Plan.	Not accepted. The abolition of the Work Authority requirement would not result in improved administrative efficiency, as all the precursor approvals would still be required. It would also reduce certainty that all of the stages and approvals necessary had been satisfied. The Work Authority includes all consents required, including the Work Plan.	Will be reviewed during the *Extractive Industries Development Act 1995* review in 2005.
5	Should the work authority remain, that: • conditions of a work authority be appealable by applicants to Victorian Civil and Administration Tribunal (VCAT) • any variation to a work authority should include consultation with the landowner.	Partially accepted. Landowners engage in discussion with the Work Authority holders as part of the variation process. Government is not a party to these negotiations and agreements. There is no benefit to competition from increased government interference in this area.	Appealable work authority conditions have been incorporated in the *Extractive Industries Development (Amendment) Act 2003*. Statutory requirement for Government to consult with landowner not necessary. However, Government to consider developing guidelines for landowners consent with industry and representative landowner groups.
6	That the work authority number be recorded on the relevant planning permit.	This recommendation was made to ensure the restoration of a site was completed. No link between the planning process and successful rehabilitation can be identified. The planning permit is issued under the *Planning and Environment Act 1987* and beyond the scope of this review.	Requires amendments to the *Planning and Environment Act 1987*, which is beyond scope of current review.
7	That the required data be obtained from one government agency, either the Department of Natural Resources and Environment (DNRE) (now the Department of Sustainability and Environment) or the ABS, and be made available by that agency to the other body.	Accepted, subject to negotiation with ABS.	Department of Primary Industries (DPI) to review administrative arrangements for collection of data and distribution of data to ABS.
8	That the requirement for a work authority holder to submit quarterly accident returns be abolished.	Accepted subject to negotiation with the Victorian WorkCover Authority.	Data is only being submitted to DPI by industry.
9	That the Act be framed to allow a flexible approach to progressive rehabilitation.	Accepted in principle	No action is required as principle of progressive rehabilitation is already present in legislation.

No	Review Recommendation	Response	Implementation
10	That the responsibilities of work authority holders and landowners in relation to the site be clearly identified in the legislation. It must be clear that the first level of responsibility for restoration and compliance with the Act must be with the holder and in default, the second level of compliance must be with the landowner.	It is not in the public interest that the landowner be responsible for restoration of a site in default of the Work Authority holder as the landowner has no operational control of the activities on the site. To make the changes recommended would be complex given the potential impacts on existing landowners and Work Authority holders with pre-existing agreements. It would also introduce uncertainty as to where responsibility lies in certain cases and create an artificial competitive advantage for operators who own the land compared to those who operate on land owned by others.	No action as the landowner has no operational control of the extractive activities on the site.
11	That an incentive system be devised that in a tangible way rewards work authority holders who actively rehabilitate their sites in an ongoing manner.	Accepted in principle	Rehabilitation bond already acts as incentive. Government to consider revised fee structure in response to recommendation 12.
12	That the extractive industry associations be encouraged to take a more active role in industry regulation matters. This can be achieved by the associations: • developing appropriate codes of practice for good quarry practice including efficient and effective methods of site restoration; • developing effective processes and procedures to deal with members who infringe the codes of practice; and • developing close relations and protocols with Minerals and Petroleum Victoria's (MPV) inspectorate to ensure all sites are managed in accordance with the Act and Regulations.	Accepted	Government will continue to involve industry bodies and develop appropriate codes of practice and guidance notes in relation to industry regulation matters.
13	That enforcement of the Act and Regulations by MPV continue to be undertaken in a fair, consistent and rigorous manner. It is suggested that the MPV, in consultation with the industry bodies, develop a system of regular audits of all sites and that such audits be conducted on a full cost recovery basis.	Accepted	Government in consultation with industry bodies will continue to regularly audit sites and instigate a review to develop options for full cost recovery.

No	Review Recommendation	Response	Implementation
14	That a review should be conducted of the guidelines used in setting bonds to ensure that the application of the guidelines provide for the optimum level of outcome in terms of restoration while providing the least costs of compliance for industry. In identifying appropriate guidelines for bond setting, the review should consider the potential risks (environmental and safety) associated with various types and sizes of quarry operations and determine a level of risk below which a bond is not required. The review should consider the equity of existing levels of bonds and recent increases relative to the reviewed guidelines. The review should also consider the potential for independent assessments, against agreed guidelines, of restored sites and the provision of appeal rights for work authority holders following the determination of a bond level. The review should be conducted by DNRE with representation from the industry bodies, landowners and local government.	Accepted	Review in progress.
15	That for transparency reasons the guidelines for bond setting and to the extent appropriate, the process of bond setting and its exemption criteria, should be included in regulations.	Not accepted. Costing guidelines in Regulations would be inflexible and could frequently result in assessments that do not reflect the liabilities associated with particular operations. Exemptions from bonds would result in inconsistent application of bonds and would also be anti-competitive and increase liability for the State. Department costings are provided to licensees on request.	The Government, as part of a current review of bond policies, will consider opportunities for increasing transparency. Guidelines resulting from the review will be made publicly available.
16	As the Auditor-General identified that the value of bonds held was less than the estimated funds required for rehabilitation, it is recommended the exact nature of any liability in this area be ascertained.	Accepted	Currently being implemented.
17	That royalty rates for stone from Crown land should be set by the responsible land manager (Minister), possibly with advice from the DNRE.	Not accepted. To allow the Minister for Environment to set the royalty rates would impose an unreasonable responsibility on that Minister to set royalties for an industry that they are not directly involved in. Instead the Minister for Resources sets the royalty rate and the Minister for Environment can advise in special situations that warrant a higher or lower royalty rate.	No action.

No	Review Recommendation	Response	Implementation
18	That royalty rates be reviewed on a regular basis, say each year, to ensure the beneficiaries obtain fair market value for the product.	Accepted in principle, subject to review.	A review of setting and monitoring of royalty rates to be considered during review of the *Extractive Industries Development Act 1995* in 2005.
19	That a review of the setting of the rate be undertaken to provide advice about all the matters that should be considered in the setting of the rate. This may be provided in a formula.	Accepted	A review of setting and monitoring of royalty rates to be considered during review of the *Extractive Industries Development Act 1995* in 2005.
20	That the certification of quarry managers be discontinued. This should be done over a reasonable period (say, 2–3 years) to enable the industry time to develop its own accreditation or other similar process.	Accepted	Incorporated in the *Extractive Industries Development (Amendment) Act 2003*.
21	In the interim or should the certification process continue in the same format it is recommended: • assessment for certification purposes only relate to the Act's objectives and not include other competencies. • certificates of quarry manager be issued for a fixed term, say, 5 years, or alternatively, for the period the person remains as an operating quarry manager; • that the inquiry process be reviewed to ensure: (a) the work authority holder is consulted about the process; and (b) the inquiry investigate and recommend appropriate action.	Accepted	Will be considered if a situation arises before the quarry manager's certificate is phased out.
22	That administration of extractive industry controls remains with the DNRE and these controls are retained in the existing Act.	Accepted	No action required.
23	That: • the Act be amended to require the applicant for a work authority to obtain the consent of the MRDA licensee • consideration be given to abandoning the current purpose in the Act for the notification procedure.	Accepted	Incorporated in the *Extractive Industries Development (Amendment) Act 2003*.

No	Review Recommendation	Response	Implementation
24	That a review be conducted of the operations of government quarries to establish whether any receive net competitive advantages and to provide options for establishing competitive neutrality in their operations.	Accepted	The Government will review the operation of Government quarries to ensure that they are applying competitive neutral principles to material sold for other than public purposes.
25	The review identified the requirement to obtain a permit to search for stone and the restriction of land available for searching as restrictions to competition. However the review considered any restriction on competition was justified on public benefit grounds and made no recommendations in relation to this issue.	Partially accepted	Requirement to obtain a permit to search removed by the *Extractive Industries Development (Amendment) Act 2003*. Access to private or Crown land requires consent of landowner.

Agricultural and Veterinary Chemicals

Legislation:	***Agricultural & Veterinary Chemicals (Control of Use) Act 1992; Agriculture & Veterinary Chemicals (Victoria) Act 1994***	**Portfolio:**	Agriculture
Reviewer:	Consultant (Price Waterhouse Coopers)	**Date Review Completed:**	January 1999
Consultation:	Release of issues paper and call for submissions, targeted interviews	**Date Response Released:**	January 2000

No	Review Recommendation	Response	Implementation
1	Retention of a single provider of registration decisions in Australia.	Accepted.	No change required.
2	That the AgVet Code be altered to specifically provide for the identification of low risk chemicals, hence enabling potentially faster registration. This would enable unnecessary registration cost burdens on the manufacturers of these chemicals to be removed.	Accepted in part, subject to further consideration by Low Regulatory Activity Task Force.	Amendments to the *Agricultural and Veterinary Chemicals Legislation Amendment Act 2003* (Commonwealth) were enacted in February 2003, with the Act coming into operation in October 2003.
3	That sections 4 & 5 of the AgVet Code be amended to provide guiding principles for the inclusion or exclusion of chemicals by regulation. These principles should emphasise the relevant risks that the Scheme was developed to manage.	Accepted in part.	As above.
4	That the National Registration Authority for Agricultural and Veterinary Chemicals (NRA) establish service agreements with its current suppliers and purchase assessment services on a fee for service basis.	Accepted.	Not applicable to Victoria.
5	That the NRA both accepts alternative suppliers of assessment services and actively alerts likely providers to this fact.	Accepted in principle, subject to consideration by Working Group.	In September 2002, the Primary Industries Standing Committee (PISC) endorsed the final report of the Assessment Services Working Group. Federal Cabinet endorsed the framework in December 2003.
6	That Section 14(3)(f) of the AgVet Code be amended to specify that efficacy review extends only to ensuring that the chemical product meets the claimed level of efficacy on the label.	Rejected.	The decision to reject this review recommendation reflected the views of the majority of States, to which Victoria reluctantly acquiesced.

7	That the levy be changed to a simple flat rate levy with no exemptions or caps. The annual renewal fee should be abolished and a nominal minimum levy liability (per registered product) set instead.	Accepted in principle, subject to consideration by Working Group.	A revised fee and levy structure has been developed by the Commonwealth Working Group and endorsed by PISC. A draft Cost Recovery Impact Statement on the proposed fee structure was released for public comment in December 2003. The introduction of the amendment Bill is proposed for the 2004 Autumn Parliamentary sittings and the new fee structure is to commence on 1 July 2004.
8	That application and other registration service fees be cost reflective.	Accepted.	To follow Commonwealth administrative procedure.
9	That the licensing of veterinary chemical manufacturers be retained. However, Good Manufacturing Practice should be optional for manufacturers of low risk veterinary chemicals, in line with the introduction of a low risk category of registration.	Accepted in part. Licensing of veterinary chemical manufacturers is supported.	No change required
10	That the AgVet Code be amended to remove the present requirement for licensing of agricultural chemical manufacturers until the case for such an extension is made.	Rejected, subject to further consideration.	Further examination has lead to the recommendation being accepted. The Australian Pesticides and Veterinary Medicines Authority (previously known as NRA) released a RIS for public comment in December 2003. A new quality assurance system commenced on 1 March 2004.
11	That the compensation process provisions of the AgVet Code be modified to adopt the procedures and principles for determining third party access pricing under the various Codes in operation under Part IIIA of the *Trade Practices Act 1994.*	Rejected, alternative arrangements in hand. Third party access to data is a complex matter associated with proprietary rights, which belong to the original provider of the data. Issues associated with access to data and in particular the aspect of third party pricing, are currently being addressed under the Commonwealth review of data protection legislation with respect of the operation of the National Registration Authority.	The Government has considered the Report's recommendations in relation to compensation for third party access to chemical assessment data and agrees that there should be an enhanced data protection mechanism. A policy reform document has subsequently been developed by government and agreed with industry. Initial drafting instructions for legislation are being prepared for further consultations with industry.

12	That Agriculture and Resource Management Council of Australia and New Zealand (ARMCANZ) establish a control of use task force to develop a nationally consistent approach to off-label use and other control of use issues.	Accepted.	It has been agreed that nationally consistent outcomes in chemical risk management are essential and that currently no areas have been identified in which there is a deficiency in desired outcomes. The taskforce has agreed that more data is required nationally to substantiate risk management performance in agricultural and veterinary chemicals across the country. This approach has been endorsed by the Standing Committee on Agricultural Resource Management (now PISC). The final report of the taskforce was endorsed by PISC in March 2003.
13	That the veterinary surgeon exemption in the AgVet code be retained.	Accepted.	No amendments necessary.
14	That Tasmania's control of use legislation be amended to limit the exemption afforded to pharmaceutical chemists to those circumstances where they are acting under the instructions of a veterinary surgeon.	Not applicable.	
15	That Victoria and Queensland's control of use legislation be amended to remove the exemption afforded to veterinary surgeons in respect of agricultural chemicals.	Accepted.	Change made in *Agricultural and Veterinary Chemicals (Control of Use) (Further Amendment) Act 2001*.
16	That the ARMCANZ control of use taskforce addresses the veterinary exemption.	Accepted.	Complete
17	That an appropriate business licensing system for AgVet chemical spraying businesses (ground or aerial) would entail no more than the relevant state AgVet authority issuing a licence; subject to: • maintenance of detailed records of chemical use; • using only appropriately licensed persons to perform application activities; • the provision of infrastructure to enable persons to operate at the appropriate competency level.	Accepted.	A nationally consistent aerial spraying licensing system is currently being progressed by an Agricultural and Veterinary Chemicals Policy Committee. Addressing recommendations 17 & 19 are a part of the terms of reference of this working group. There was agreement by Agriculture and Resource Management Council of Australia and New Zealand Control of Use Taskforce with respect to the need to licence aerial spraying businesses.

18	That an appropriate occupational licensing system for persons undertaking AgVet chemical spraying (ground or aerial) for fee or reward would entail no more than the relevant State AgVet authority issuing a licence, subject to: • holding accreditation of appropriate competencies (including scope for provisional accreditation of new employees); • operating at that competency level; • working only for a licensed business (as above).	Accepted.	As above
19	That the States and Territories examine the scope to coordinate their business and occupational licensing requirements, specifically the scope to standardise accreditations and the scope to recognise interstate licences.	Accepted.	As above The mandatory insurance for ground spraying was removed from business licensing requirements in Victoria in line with other jurisdictions.
20	That the exemption from business and occupational licences (but not from generic controls) be retained for persons spraying AgVet chemicals on their own land (this exemption is mainly aimed at primary producers).	Accepted.	No change

No	Restrictions on Competition Remaining	Competition Policy Justification
1	The extent to which chemical efficacy rates may be determined by the NRA rather than allowing products that are correctly labelled but have relatively low efficacy to be sold.	A chemical with adequate efficacy (i.e. as determined by NRA) has the effect of minimising the quantity of chemical required to be used in a particular situation and thus minimises worker exposure to that chemical. In contrast, a chemical with inadequate efficacy (i.e. as could be determined by the registrant) could lead to excessive use of that chemical, relative to the use pattern of a chemical with adequate efficacy, to achieve an equivalent control over pests and diseases. In brief, inadequate efficacy of a chemical is likely to equate to an increased occupational health and safety risk to workers. The use of agricultural and veterinary chemicals with inadequate efficacy may also give rise to unnecessary risk to the environment. The use of inadequate efficacy products is likely to entice more frequent application and higher rates of application of a chemical in order to achieve effective control of pests and diseases.
2	Compulsory Good Manufacturing Practice (GMP) for manufacturers of low risk veterinary chemicals.	In considering the notion of different “risk” categories, especially “low risk” categories, attracting different licensing standards, it is important to note that substandard products, regardless of their prima facie risk status, may result in damage to people, crops or animals. GMP is designed to address risks associated with the chemical manufacturing process as distinct from the risks associated with the use of a chemical and addresses matters such as contamination of chemicals during manufacture.

No	Restrictions on Competition Remaining	Competition Policy Justification
3	Retaining the requirement for aerial sprayers to hold an approved public liability insurance policy in Victoria.	Aerial spraying is a higher risk activity compared to ground spraying, and is carried out in areas or under conditions where ground spraying could not be done (such as hilly areas or areas too wet to allow access by ground equipment at the relevant time). This is especially the case for the use of herbicides for noxious weed control. Some other states such as New South Wales and Tasmania have continued to require professional aerial sprayers to hold insurance for a minimum of $30 000 damage. This type of insurance is provided by a very limited number of companies, the Australian Aviation Underwriting Pool being the largest and covering the majority of the industry, which comprises approximately 400 pilots in Australia. The relatively small value of insurance required for aerial spraying strikes a balance between providing coverage for minor off-target spraying adverse incidents and preserving the financial viability of the underwriters providing insurance.

Port Services

Legislation:	***Port Services Act 1995***	**Portfolio:**	Transport
Reviewer:	Professor Bill Russell	**Date Review Completed:**	December 2001
Consultation:	Public and Stakeholder	**Date Response Released:**	July 2002

No	Review Recommendation	Response	Implementation
3.1	The Minister for Ports be responsible for the creation, classification and dissolution of Victorian ports within the port legislation.	Accepted.	*Port Services (Port Management Reform) Act 2003* was passed in Spring 2003.
3.2	The Review recommends that Minister for Ports be given the primary responsibility for port corporation boards (in consultation with the shareholder Minister).	Review the balance of Ministerial responsibilities in the context of the Statewide Strategic Framework for ports and the broader charter envisaged for ports corporations.	The portfolio Minister will have more of a role in the governance of port corporations. The *Port Services (Port of Melbourne Reform) Bill*, passed in Autumn 2003, gives effect to a number of amendments that reflect this.
3.3	The Review supports the continuing Government Business Enterprise (GBE) governance and shareholder role of the Treasurer and the regulatory role of Minister for Finance.	Government endorses the GBE governance and shareholder role of Treasurer and regulatory role of the Minister for Finance.	No action needed
3.4	The Minister for Ports develop a Statewide Port Strategy, closely dovetailing with the Government's other related strategies such as the Freight and Logistics Strategy and the Metropolitan Strategy.	The Minister for Ports will oversight the development of a Statewide Strategic Framework for all ports (public, private and local).	The Department of Infrastructure (DOI) has developed a draft Victorian Ports Strategic Framework (VPSF) in parallel with the Freight and Logistics Framework. Timeframes for this work have been reviewed and it is now expected that the document will be circulated for formal consultation around mid 2004 in conjunction with the Freight and Logistics Strategy.
3.5	The government be proactive and ensure that necessary public investments required by the ports proceed in a timely manner.	The Victorian Ports Strategic Framework will provide the context and criteria from investment priorities are determined.	See recommendation 3.4.

No	Review Recommendation	Response	Implementation
3.6	DOI enter into negotiations with private operators to establish an agreement for the provision of data needed for Statewide port strategic planning purposes.	Agree.	See recommendation 3.4.
3.7	Intermodal and network efficiency initiatives to be overseen through an intermodal unit within the DOI.	Accepted.	An Intermodal Unit was established within the Ports and Marine Division of the DOI in November 2002.
3.8	Transfer of the ministerial responsibility for local ports to the Minister for Ports and that the budget and central management responsibility of the local ports program be transferred from Department of Natural Resources (DNRE) to DOI.	Not supported. Government endorses the retention of responsibility for local ports by the Minister for Environment and Conservation and DNRE. Government will review ports legislation and develop a specific strategy for local ports (see Actions 13–14).	Responsibility for local ports rests with the Minister for Planning, and the Department of Sustainability and Environment (DSE) (See recommendation 3.1).
3.9	Local ports' operational management arrangements continue and DOI, as the incoming manager of the local ports program at the central level, should progressively address the infrastructure requirement, funding and governance improvements that might be appropriate in each local region.	See the above response to recommendation 3.8.	Refer to 3.8
3.10	Consideration should be given to constituting Gippsland Ports as a statutory authority, with appropriate governance arrangements and risk management protections.	See the above response to recommendation 3.8.	Refer to 3.8
3.11	The commercial fishing operations at the Port of Portland be reviewed to ensure the needs of the fishing industry are able to be met, within the framework of State support for fishing ports, through the local ports program.	Accepted (Action 14)	The Government intends to transfer the management of appropriate facilities within the fishing precinct to a local port committee of management in mid 2004 and has allocated $2 million from the Regional Infrastructure Development Fund in 2003/2004 for repairs and upgrades.
3.12	Station Pier is an operational port facility and recommends that the local port manager, Melbourne Ports Corporation (MPC), or its successor should manage it in future.	This recommendation will be referred for further consideration to the Implementation Taskforce to be considered in the context of the proposed charter of the new integrated body for Melbourne.	Port of Melbourne Corporation (POMC) has targeted 1 July 2004 to resume management of the Pier, subject to Ministerial approval of the conditions of transfer from DOI.

No	Review Recommendation	Response	Implementation
3.13	The MPC or its successor be required to explicitly undertake the function of implementing the cruise shipping strategy at Station Pier and managing the sea passenger terminal.	See the above response to recommendation 3.12.	POMC has targeted 1 July 2004 to resume management of the Pier, subject to Ministerial approval of the conditions of transfer from DOI.
3.14	Port legislation should be amended to provide MPC or successor with effective management powers over the Ann Street Pier at Williamstown.	Longer term decisions about the future of Ann Street Pier will be made in the context of strategic land use plans for the port and surrounding community. In the short term, government will examine mechanisms to provide MPC with more effective management powers.	The new legislation provides a convenient mechanism for bringing Ann Street Pier within the management responsibility of the POMC. A proposal to achieve this is being developed and subject to consultation and agreement within Government, is targeted for achievement by mid--2004.
4.1	New port legislation be introduced to establish a Melbourne Port and Channels Corporation (MPCC). The principal objectives of the MPCC are to provide a modern, effective and logistically integrated port, through which: A focus on cost control and port competitiveness. Making an effective contribution to the development of the Victorian economy. • innovation is encouraging innovation and the employment of best practice technology and logistics practices are facilitated • effective management of waterside and land-side facilities are managed to provide a cost effective seamless service to importers and exporters • providing economic, social and environmental sustainability • recognition of its responsibility and accountability to the Minster for Ports and the Victorian public • promoting intermodalism • achieving high levels of partnership between the public and private sectors • maintaining the highest levels of safety and environmental management practice	Prepare legislation to abolish the MPC and Victorian Channel Authority (VCA) and establish a new, single integrated corporation (Action 8). In the short term, implement administrative measures to improve coordination and integration of port management activities, including the establishment of a Channel Operating Agreement which transfers responsibility for the management of all channels in Port Phillip, except the Geelong channels, from VCA to the MPC (Action 9)	*The Port Services (Port of Melbourne Reform) Act* was passed in Autumn 2003. The Act established the POMC and abolished the MPC. The Act also provided for the transfer of channel management functions in the Port of Melbourne, from the VCA to the POMC. The Act set out a revised charter for the POMC, giving effect to the concept of an integrated port manager for the Port of Melbourne. Following the passage of the *Port Services (Port Management Reform) Act 2003*, (Spring 2003) the VCA will be abolished and replaced by the Victorian Regional Channels Authority (VRCA). The VRCA will continue to manage channels in the ports of Hastings, Portland and Geelong.

No	Review Recommendation	Response	Implementation
4.2	The VCA and the MPC be abolished and replaced by a new statutory corporation.	See recommendation 4.1. Under new channel management arrangements: • channels will remain the property of the Crown • channel operating licences or leases will ultimately be issued to all commercial ports (including both Melbourne and Geelong) • the new integrated port corporation for Melbourne will be licensed to operate all of the channels serving Port Phillip, except the channels exclusively serving Geelong • a channel operating licence will be issued to an appropriate port management entity (or entities) for Geelong, subject to resolution of concerns expressed key Geelong stakeholders • the operation of the channel operating licences/leases and a newly certified access regime will be independently monitored by the ESC • in the short term, the VCA will transfer channel management responsibility for Melbourne to the MPC under a Channel Operating Agreement but will retain direct management responsibility for the Geelong channels.	See recommendation 4.1.

No	Review Recommendation	Response	Implementation
4.3	The port legislation provide the following functions for the MPCC: • to develop and manage the Port of Melbourne and associated land-side and waterside facilities in an effective and efficient manner; • to under licence from the Minister for Ports, to maintain and manage shipping channels serving the Port of Melbourne or assigned to it by the Minister, and manage the associated shipping operations, navigational and safety needs of commercial shipping; • to operate Melbourne's Station Pier sea-passenger terminal and to develop that facility and cruise liner and other trade through it; • to facilitate trade through the port. • to facilitate and encourage private investment and innovation in logistics, terminals, and ancillary activities associated with the port • to protect the environment in and around the port and have regard to the interests of communities affected by it • to undertake strategic planning for the port and contribute to the development of Victoria's Statewide freight and logistics planning processes • to manage State owned port-related land in a commercially and socially responsible manner • any other function referred to it by the Minister	See recommendation 4.1.	Under a revised *Port Services Act 1995*, the POMC was established on July 1 2003 to perform the following functions in a manner that is safe, secure, environmentally sustainable, effective and efficient, and commercially sound: • to manage and develop the Port of Melbourne in an economically, socially and environmentally sustainable manner; • to ensure that essential port services of the Port of Melbourne are available and cost effective; • to ensure, in co-operation with other relevant responsible bodies, that the Port of Melbourne is effectively integrated with other systems of infrastructure in the State; • to facilitate, in co-operation with other relevant responsible bodies, the sustainable growth of trade through the Port of Melbourne; • to establish and manage channels in Port of Melbourne waters for use on a fair and reasonable basis.
4.4	The port legislation provide that the performance measures the MPCC reports annually: • trade through the port and market share by volume and value • investment by the port in facilities and channels • process efficiencies in the port • logistical and technical innovation • environmental performance • safety performance • performance in the management of port land and assets • any other matter requested of it by the Minister or the Treasurer	See recommendation 4.1.	A corporate plan reflecting the revised objectives of the POMC has been prepared for the next planning period (2004-2006). This includes performance indicators as agreed in consultation with the Minister and Treasurer.

No	Review Recommendation	Response	Implementation
4.5	The Corio channel should continue to be in public ownership, with an access regime, but with the capacity for it to be licensed to a private operator if an economically preferable and competitively neutral basis can be established for this. It is recommended that the Corio channel be managed by the MPCC, under licence from the Minister for Ports. It is also recommended that the ESC, in reviewing the Victorian Access Regime for Commercial Shipping Channels for recertification in 2002, undertakes an economic study, firstly to determine access pricing for this channel and to assess the impact of the channel being sub-licensed to the port operator.	The Implementation Taskforce will also oversight the development of a new access regime to apply to the proposed integrated port management arrangements, for certification by the NCC, and will ask the ESC to undertake the proposed study to determine access pricing for the Geelong channels.	The Essential Services Commission (ESC) released *The Inquiry into Port Channel Access in Victoria: Final Report* in May 2003. The report found that the current access arrangements - including both channels access and pricing control – met the Commission's regulatory objectives. It recommended application to the NCC for certification of the regime as an effective state-based regime under the Competition Principles Agreement (CPA). It is proposed that this will be progressed in 2005.
4.6	The Hastings Port Holding Corporation (HPHC) be abolished and replaced by a small statutory authority, the Hastings Port Corporation, with small staff and a presence in Hastings. Its purpose would be as holder of the existing port assets and of corridor and buffer assets that may be acquired as a strategic investment. The Corporation should be accessible and visible, participating actively in community and land-use planning processes that impinge on the present or future role of the port and its environs. It also recommended that the Minister for Ports license the port tenant manager to maintain the channel and to manage shipping operations in the Port of Hastings.	The Implementation Taskforce will oversight a review of the charter, structure and resourcing of the HPHC with a view to properly equipping it to plan and provide for the potential future role of the Port of Hastings in the Victorian port and freight logistics system. The Government, through DOI, has provided additional resources to HPHC in the form of a part-time officer to enable the establishment of an office at Hastings.	The *Port Services Act 2003 (Port Management Reform) Bill* was passed in Spring 2003. This created the new Port of Hastings Corporation with new objectives and functions which enable to it to properly plan and provide for its potential future role as Victoria's second container port.
5.1	The review concurs with the Government's intention that the ESC be the economic regulator of Victoria's ports.	See the response to recommendation 4.5.	No Action Required.
5.2	The Victorian Sea Channel Access Regime has been certified by the NCC and provides a level of comfort to port tenants, and should continue. It is recommended that a review of the access regime in preparation for recertification be undertaken by the ESC, based on the licensing arrangements put forward in Recommendation 4.5 of this report. This Review should address access pricing for the Corio Channel and assess the economic impacts of licensing the Geelong port operator to manage the Corio Channel.	See the response to recommendation 4.5.	See response to recommendation 4.5.

No	Review Recommendation	Response	Implementation
5.3	The port legislation include an expanded definition of port 'prescribed services' to include trade facilitation, strategic planning, intermodal efficiency, facilities management, port safety, port environmental management and industry and community consultation activities of port management.	The Government endorses the Report's support for economic regulation of the ports to continue through the ESC. In doing so, it notes that the economic regulation of ports should be consistent with a broader strategic charter for port operators and recognise the legitimate costs of fully complying with safety and environmental requirements. See recommendation 4.5.	Following discussions with ESC it has become evident that by giving the POMC broader objectives and functions, as proposed, that a wider range of costs can be taken in to consideration in pricing determinations under existing regulatory legislation *(Essential Services Commission Act 2001)*. To reinforce this position, amendments were made to the definition of prescribed services in the *Port Services (Port Management Reform) Act 2003*.
6.1	The *Marine Act 1988* should provide an explicit requirement for all Victorian ports to operate in a safe manner. This matter is of such importance that the Minister should take responsibility for instituting a Port Operating Licence required by all ports in the State.	Government considers safety and environment of key importance for ports. The Government has identified specific actions to deliver improvements to safety and environment in all ports. Ensure that safety and environment values are fully recognised in the development of the Statewide Strategic Framework for ports (Action 15). Revise port legislation to: • include an explicit requirement for ports to be operated safely and in an environmentally responsible manner • require all ports to have safety and environment plans appropriate to the size and nature of port operations.	The *Port Services (Port Management Reform) Act*, amended the *Port Services Act 2003*, to create a requirement for all ports in Victoria to have in place Safety and Environmental Management plans by 1 July 2005.

No	Review Recommendation	Response	Implementation
6.2	The Review recommends that Marine Safety Victoria (MSV) coordinates, with other safety regulatory agencies, the production of a documented Port Safety Code. MSV should maintain the material, with regular updates, to be supplied to all Victorian ports. This document would include the harbourmaster directions (which may evolve into regulations under the *Marine Act 1988*), the duties and powers of all safety and environment agencies, and the standards and audit requirements.	Agencies to develop broad guidance on developing and implementing Port Safety and Environment Plans. MSV will undertake a coordinating role in this joint process (Action 18).	DOI has convened a working group consisting of representatives from the Environment Protection Agency (EPA) , Marine Safety Victoria (MSV) and Worksafe Victoria to develop guidance material to assist ports to meet their safety and environment legal obligations under the revised *Ports Services Act 1995*. Ministerial Guidelines and a Resource Manual will be published in mid 2004.
6.3	The harbourmaster role is an essential operational focus within the port system and should be maintained. Harbourmasters should be employed by licensed port managers. Legislation should empower the harbourmaster to direct operations in the port in compliance with the Port Safety Code and relevant regulations.	Government supports the development of harbourmaster directions into regulations. See response to recommendation 6.2.	The *Marine Act 1988* is currently under review, which will include consolidation of harbour master provisions under that act. There is no intention to make any substantive changes to the powers of harbourmasters. Harbourmaster regulations are currently being drafted. Implementation of the regulations will be subject to a formal Regulatory Impact Statement process. Following passage of the proposed *Marine (Amendment) Act 2004*, any regulations relating to Harbour Master functions, will no longer fall under the *Port Services Act 1995*.
6.4	The MSV's role encompasses the employment of marine safety inspectors to implement the Port Safety Code in all Victorian waters, enforce standards for navigation and channels, deliver training and advice to port management, conduct safety inspections and support harbourmasters.	MSV to employ marine safety inspectors to improve its capacity to ensure that effective safety operational coverage exists for all State waters, that appropriate marine safety advice and expertise is available to all ports and to undertake marine compliance activity as necessary.	MSV has established a Marine Safety Inspectorate and appointed staff to provide marine safety advice and expertise to both local and commercial ports.
6.5	Commensurate with its statewide obligations, MSV be empowered to direct port managers to assist in marine incidents in State waters outside of port waters; to conclude service contracts with possible providers of incident assistance; and to provide indemnification to employees of ports providing incident assistance outside of port waters.	MSV to develop an action program to address inconsistencies in relation to responsibility for safety and pollution response in State waters, including necessary legislative or regulatory reform, for consideration by the Minister for Ports by the end of the third quarter 2002.	The MSV has completed a draft analysis of gaps and inconsistencies in marine safety legislation. This analysis will form the basis of amendments to relevant legislation in the Autumn 2004 sitting of Parliament.

No	Review Recommendation	Response	Implementation
6.6	The Review recommends that the bundle of prescribed port services be amended to include port safety and environmental management services, and that this be reflected in both the ESC schedules and port legislation.	See response to recommendation 5.3.	Refer 5.3
7.1	Clear environmental responsibilities be included in legislation for all Victorian ports. Such legislation should extend to the making of environmental management plans, the enforcement of compliance with those plans and the commissioning of environmental audits.	See response to 6.1 & 6.2.	See response 6.1 & 6.2.
7.2	The EPA produce, in consultation with DOI, a Statewide Port Environmental Code, and that it become an incorporated document under the State Environment Protection Policy 'Waters of Victoria'.		Refer 7.1.
7.3	All Victorian ports be required under the State Environmental Protection Policy 'Waters of Victoria', to prepare whole of port, precinct or site based environmental management plans or systems.		Refer 7.1.
7.4	The Review recommends that the Minister for Ports reference both the Statewide Port Environmental Code and the Statewide Port Safety Code in the port licensing regime proposed elsewhere in this report.		Refer 7.1.
7.5	MSV coordinate with other regulators to publish in a single publication, with an actively maintained update service, designed for universal distribution in the ports community, the Statewide Port Environmental Code and the Statewide Port Safety Code.		Refer 7.1.
7.6	The costs of environmental functions undertaken by regulated port bodies should be recognised by the economic regulator in the price regulation process.		Refer 5.3.
8.1	The Minister for Ports should retain Victorian Sea Freight Industry Council (VSFIC), and take its *Future Directions* into account in developing ports and logistics strategies and in setting public port investment priorities	Agreed.	
8.2	A government Inter-agency Taskforce meets regularly to consider mutual interests of the port sector and how government may effectively contribute.	Establish a high-level Inter-agency Taskforce to bring a whole-of-government perspective to ports planning, development and administration.	Taskforce has been established to oversee implementation of the port reform agenda.

No	Review Recommendation	Response	Implementation
8.3	The Review recommends that the proposed MPCC examine the models of Sydney, Vancouver and the UK and develop a consultation structure involving port users, councils and other relevant stakeholders.	The Minister for Ports will write to all commercial ports seeking advice about current and proposed mechanisms to promote improved relationships between the port and its neighbouring community. Through the corporate planning process, require publicly-owned ports to adopt specific measures to improve the quality of their consultation and community relations processes and to measure and monitor their performance in this regard.	Response received and they have provided the basis for further dialogue between the Department and port corporations. Corporate relations are a key component of the POMC's revised corporate plan. Consultation is also emphasised in the Hasting Port Holding Corporation's (HPHC's) revised legislative charter.
8.4	A program to develop effective public understanding and public relations as in Vancouver should also be considered by the proposed MPCC.	See response to recommendation 8.3.	See response to recommendation 8.3.
8.5	The municipalities of Geelong, Glenelg and Mornington Peninsula and the relevant port managers hold discussions with a view to establishing formal, flexible and effective consultative structures at which stakeholders and operators can discuss key impacts, future developments and risk management issues arising from port operations.	Encourage private ports to adopt best practice consultation mechanisms and actively develop positive relationships with their local communities.	In addition to writing to all commercial ports the Government has undertaken research into the best practice consultation and community relations. Findings have been circulated to ports and discussed as part of the community relations forum convened by DOI. This process is ongoing.
8.6	Each local port committee of management should, as a minimum, hold a public annual general meeting at which information concerning planned port developments are tabled.	See response to 8.5.	See response to 8.5.
8.9	The Government, in undertaking its review of public sector board governance, consider whether it should reinstate in Victorian port bodies a wider element of stakeholder and/or maritime industry experience.	No response.	No Action.

Club Keno

Legislation:	***Club Keno Act 1993***	**Portfolio:**	Gaming
Reviewer:	In-house review by the Department of Treasury and Finance, completed according to NCP guidelines	**Date Review Completed:**	September 1997
Consultation:	Within government consultation involved the Revenue Policy Division of the Department of Treasury and Finance, the Victorian Casino and Gaming Authority The two key industry stakeholders – Tattersall's and TABCORP – were provided copies of an interim report, to which the two provided written submissions to the review panel	**Date Response Released:**	February 2003

No	Key review recommendations	Response	Implementation
1	The permissible venues for Club Keno should be liberalised. Two options that the government might consider are extension of Club Keno operations to any club or hotel in Victoria, or, sale through retail outlets.	Noted	The Government will postpone examining the possibility of removing the venue restriction until the comprehensive review of the Victorian Electronic Gaming Machines (EGM) industry to be commenced by 2006. The Government believes that any changes to Club Keno legislation should be considered in conjunction with changes to the EGM arrangements. However, the Government is concerned that Club Keno may have the potential to cause harm because: • it is fast-paced, and therefore has a relatively high potential to induce problem gambling in some patrons; • research conducted in Victoria suggests that Club Keno is attractive to those who are problem gamblers or at risk of becoming problem gamblers; and • Club Keno is a potentially addictive form of gambling and should not be available in places where minors may be present.

No	Key review recommendations	Response	Implementation
2	The government should make available licences to supply club keno to those who pass the probity checks. Any pooling should emerge through the market (ie. those with strong networks and attractive games). In club keno, there should not be exclusive licences.	Accepted-in-principle	The Government has announced that it will complete the review the EGM industry structure during its current term, i.e. by 2006. Extending the availability of Club Keno licences to other operators who pass probity checks will be considered as part of this review. Without pre-empting the outcomes of that review, the Government supports greater competition in the industry, including in the provision of Club Keno. Any comprehensive review of the post-2012 EGM industry structure should consider a number of the issues, including the ownership structure and number of gaming operator licences, the licensing arrangements for Club Keno, as well as the Government's obligation to minimise the harm caused by excessive gambling.
3	There should be flexibility in the 'rules of the game 'to allow for potential competitors to propose new game rules.	Accepted-in-principle	The Government accepts in principle the review recommendation. It concurs that increased flexibility would encourage innovation and also ensure consistency between the treatment of Club Keno and other forms of gambling. The Government will consider the matter as part of the review of EGM industry arrangements.
4	In view of the small relative size of club keno, and other legislative reviews of gambling regulation to be conducted, the government may wish to combine implementation with other changes to gambling legislation.	Accepted	The Government accepts the recommendation and will review any potential changes to the Club Keno Act as part of a review of the EGM industry review. It will implement any changes to Club Keno industry structure in parallel with changes to EGM industry structure.

Transport Accident

Legislation:	***Transport Accident Act 1986***	**Portfolio:**	WorkCover
Reviewer:	PricewaterhouseCoopers and Minter Ellison Lawyers	**Date review completed:**	December 2000
Consultation:	Advertisements were placed for the receipt of submissions, targeted stakeholder consultation was also undertaken.	**Date response released:**	February 2001 (Draft Response).

No	Review Recommendations	Response	Implementation
1	*Restriction on Competition* There is a compulsion for all registered vehicle owners in Victoria to pay a transport accident charge. *Review Recommendation* The charge should remain compulsory in the interests of achieving the social policy objectives of the Act.	Accepted	Retain status quo.
2	*Restriction on Competition* The Transport Accident Commission (TAC) is the single manager of the transport accident compensation scheme in Victoria. This is, in effect, a legislated monopoly. *Review Recommendation* The single manager arrangement should be maintained for Compulsory Third Party personal insurance in Victoria at this time, as it provides the greatest net public benefit. However, the Victorian Government may wish to consider the scope for improved market testing of some of the services provided.	Accepted	Retain status quo. However, the Government will continue to review the functions performed by the TAC to identify if there is scope for greater contestability to be introduced.

Accident Compensation

Legislation:	***Accident Compensation Act 1985 Accident Compensation (WorkCover Insurance) Act 1993***	**Portfolio:**	WorkCover
Reviewer:	Consultant (PricewaterhouseCoopers and Minter Ellison Lawyers)	**Date review completed:**	December 2000
Consultation:	Advertisements were placed for the receipt of submissions, targeted stakeholder consultation was also undertaken	**Date response released:**	February 2001 (Draft Response)

No	Review Recommendations	Response	Implementation
1	*Restriction on Competition* A compulsion exists for employers to obtain WorkCover insurance in respect of their liability to pay compensation and common law damages to employees. *Review Recommendation* The charge should remain compulsory in the interests of achieving the social policy objectives of the Act.	Accepted.	Retain status quo.
2	*Restriction on Competition* The Victorian WorkCover Authority (VWA) is the single manager of workers' compensation insurance *Review Recommendation* The single manager arrangement should be maintained at this time, as it provides the greatest net public benefit.	Accepted.	Retain status quo. However, the Government will continue to review the functions preformed by the Victorian WorkCover Authority (VWA) to identify if there is scope for greater contestability to be introduced.

No	Review Recommendations	Response	Implementation
3	*Restriction on Competition* Centralised premium setting (regulated price). *Review Recommendation* The premium setting responsibility should remain with the VWA. However, an independent third party should review the premiums and associated rationale for setting the premiums. The independent review should be made public prior to the approval of the new premiums. This would provide greater transparency in the review setting process.	Accepted.	A third party independent review of the WorkCover premium for 2004-05 by the Essential Services Commission will be an integral part of the premium setting process in 2004.
4	*Restriction on Competition* Approval of occupational rehabilitation service providers. *Review Recommendation* The ability to approve occupational rehabilitation service providers should be retained to ensure that service providers are suitably qualified to perform the tasks required of them.	Accepted.	Retain status quo.
5	*Restriction on Competition* Eligibility requirements for self-insurers. *Review Recommendation* Self-insurance requirements should be adjusted to increase flexibility and promote the expansion of self-insurance as it allows greater emphasis to be placed on innovative occupational heath and safety outcomes rather than the insurance product.	Accepted.	VWA has undertaken a review of the self insurance arrangements. The report will be presented to the VWA Board in April 2004. The board will make recommendations to the Government of any changes required.

Table 2: Review complete response announced

Fisheries

Legislation:	***Fisheries Act 1995***	**Portfolio:**	Resources
Reviewer:	Consultant (ACIL)	**Date review completed:**	July 1999
Consultation:	Release of Issues paper and call for submissions, public meetings and targeted interviews	**Date response released:**	December 2001

No	Review Recommendations	Response	Implementation
1	Retain current conditions associated with access licences.	Accepted.	Not applicable
2	Review alternative methods for non-transferable licences such as licence buy-backs.	Accepted.	Fisheries which have non-transferable licences will eventually cease to exist as licence holders exit the fishery, or the fishery converts to a transferable licence under a Fisheries Management Plan. Non--transferable licences for Lake Tyers have been involved in a buy-back under a regulatory framework supported by guidelines.
3	Mechanisms such as auctions, tender or ballot should be considered for efficient allocation of new licences or increases in Total Allowable Catch (TAC).	Accepted.	Guidelines will be developed for the allocation of new licences or increases in TAC above threshold limits by auction, tender or ballot.
4	That licences could be granted for longer periods (up to 5 years) and that licences have automatic rights of renewal, subject to specific conditions.	Rejected.	
5	Review the effects of employee limits on fishers. These restrictions may be essential in input controlled fisheries to control effort. Current definitions need clarification.	Accepted. (Further investigation required for the abalone fishery)	Investigation of the Abalone Fishery found that it was necessary to retain diver limits due to the need to control effort. Employee limits do not affect other fisheries as these are managed by quotas or pot limits. Employee limits only relate to abalone divers presently.
6	Full cost recovery should be introduced in future to recover management costs, subject to formal policy development.	Accepted.	Legislation passed in Spring 2003 Sittings. A phased cost recovery program is to commence in April 2004.

No	Review Recommendations	Response	Implementation
7	Broader introduction of royalties or rent taxes should be considered in the future, subject to Government policy.	Accepted.	A resource rent charge is currently being formulated for the abalone fishery. Other fisheries will be reviewed in the future.
8	Retain the Individual Transferable Quota (ITQ) management system for Abalone fisheries as no less restrictive alternative is feasible.	Accepted.	Not applicable
9	The minimum and maximum quota holding and restrictions on transfer of abalone quota should be removed or reduced.	Accepted.	This recommendation can only proceed in parallel with full implementation of the Victorian Abalone Fishery Management Plan regarding changes to resource harvesting and quota ownership (i.e-separation of quota from the access fishery licence). The Government has adopted a precautionary approach for abalone quotas in line with Ecologically Sustainable Development policy. Sustainability issues arose following advice from Primary Industries Research Victoria (PIRVic, formerly the Marine and Freshwater Resources Institute), including an increased risk of serial depletion through the concentration of fishing effort at reefs already regarded as fully exploited. Government has therefore delayed implementation of this recommendation until sustainability and compliance issues arising from the proposed changes to sustainable fishing practices can be resolved. The Government has been working closely with industry representatives to address important sustainability concerns and how these will be managed appropriately through the full implementation of the Victorian Abalone Fishery Management Plan. The Victorian Abalone Fishery Management Plan is being progressively implemented and the remaining major initiative involves the NCP recommendation for the separation of quota from the access fishery licence that will be applied following the successful resolution of the sustainability issues.
10	Retain the current management arrangements for scallop fisheries as no less restrictive alternative is feasible.	Accepted.	Not applicable

No	Review Recommendations	Response	Implementation
11	Remove the regulation that enforces the requirement that there will be no shucking at sea.	Accepted in principle.	An alternative management regime for shucking at sea cannot be implemented until jurisdictional issues relating to the Victorian, Tasmanian and Commonwealth fisheries are resolved. Offshore Constitutional Settlement (OCS) management arrangements with other jurisdictions are still under review. If Victoria continues to manage all or part of the fishery, implementation of an alternative management regime will need to be investigated.
12	Consider the introduction of an ITQ management regime for Rock Lobster Fisheries.	Accepted.	*Fisheries (Rock Lobster and Giant Crab) Regulations 2001* was introduced in October 2001. The recommended replacement of input controls with output controls in the lobster fishery was implemented in November 2001.
13	Remove the restriction of limiting pot numbers per boat if an ITQ management regime is introduced.	Accepted. (New position proposed based on the ecological sustainability of the fishery.)	The Government has delayed implementation of the recommendations for rock lobster pot limits while it undertook further investigation of sustainability and compliance issues. These investigations have indicated that removing pot limits will affect the ecological sustainability of the fishery, including increased risk of interaction (and injuries) with protected species such as southern right whales. The Government is now of the view that the public benefit of these restrictions based on the ecological sustainability of the fisheries outweighs any restrictions on competition in relation to removing pot limits for rock lobster fisheries, and further work is being undertaken.

No	Review Recommendations	Response	Implementation
14	Remove the restriction on minimum pot holdings but consider the implications of enforcement costs.	Accepted. (New position proposed based on the ecological sustainability of the fishery.)	The Government has delayed implementation of the recommendations for rock lobster pot limits while it undertook further investigation of sustainability and compliance issues. These investigations have indicated that removing pot limits will affect the ecological sustainability of the fishery, including increased risk of interaction (and injuries) with protected species such as southern right whales. The Government is now of the view that the public benefit of these restrictions based on the ecological sustainability of the fisheries outweighs any restrictions on competition in relation to removing pot limits for rock lobster fisheries, and further work is being undertaken.
15	Retain the current input control mechanisms associated with the Bay and Inlet Fisheries. An evaluation of alternative output control mechanisms such as ITQ should be investigated for some species.	Accepted.	Investigations will occur under management plans. The recommendation for evaluation of alternative output control mechanisms for some bay/inlet fisheries is currently being reviewed in conjunction with the development of a Fisheries Management Plan.
16	Remove the requirement for an access licence holder to be a fit and proper person.	Accepted.	Legislation passed in Spring 2003.

Surveyors

Legislation:	***Surveyors Act 1978***	**Portfolio:**	Sustainability and Environment
Reviewer:	Consultant (Southbridge)	**Date review completed:**	July 1997
Consultation:	Call for submissions, targeted interviews	**Date response released:**	January 2003

No	Review Recommendations	Response	Implementation
1	The restrictions on entry to the cadastral surveying market should be retained, in order to safeguard the security of the Victorian property system.	Accepted.	Registration and licensing arrangements are being replaced with legislated minimum requirements to practise. Legislation in the form of *the Land Surveying Bill 2001* was introduced to Parliament in May 2001. The Bill proceeded to the Upper House, but was not debated. It lapsed in November 2002 following the calling of an election and the consequent proroguing of Parliament. The amendments are proposed for introduction into Parliament in Autumn 2004.
2	Entry to the surveying profession should continue to be regulated by a single body. This body should continue to impose a high-uniform standard of entry.	Accepted.	Not applicable.
3	The regulatory body should have the power to accredit postgraduate practical training courses as an alternative to training under supervising surveyor.	Accepted.	Implemented by Surveyors Board.
4	Integrity criteria barring entry to the surveying profession should be specific.	Accepted.	See implementation comments for item one above.
5	Integrity criteria for removal from the surveying profession should be the same as criteria barring entry to the profession.	Accepted.	See implementation comments for item one above.
6	The requirement for surveyors or related professions to form a majority of members/directors of a firm/corporation engaging in cadastral survey work should be removed.	Accepted.	See implementation comments for item one above.

No	Review Recommendations	Response	Implementation
7	Victoria should consider an agreement with other States to make interstate registration/licensing costless.	Accepted in principle.	Surveyors Board is addressing costless interstate licensing through Reciprocal Surveyors Boards of Australia & New Zealand (RSBANZ).
8	Victoria should consider an agreement with other States to make registration / licensing in one jurisdiction sufficient for automatic practise in all reciprocating jurisdictions, without a need for application to the local regulatory authority.	Accepted in principle.	Surveyors Board is addressing automatic interstate practising through RSBANZ.
9	Victoria should prioritise negotiations with other jurisdictions to coordinate cadastral law.	Accepted in principle.	Surveyors Board is addressing coordinated interstate cadastral laws through RSBANZ.
10	There should be thorough examination of all options for extending mutual recognition beyond current boundaries.	Accepted in principle.	Surveyors Board is addressing extending mutual recognition through RSBANZ.
11	Non-surveyors should form a greater proportion of members of the regulatory body than at present.	Accepted.	See implementation comments for item one above.
12	The Government should remove the power of the regulatory body to set fees for surveying services.	Accepted.	See implementation comments for item one above.

Private Agents

Legislation:	***Private Agents Act 1966/ Private Security Bill* (proposed)**	**Portfolio:**	Police and Emergency Services
Reviewer:	1. Freehills Regulatory Group 2. PriceWaterhouseCoopers	**Date Review Completed:**	1. October 1999 2. May 2001
Consultation:	Key industry bodies and providers; Victoria Police; Melbourne Magistrates Court.	**Date Response Released:**	January 2004 (Summary response)

Rpt No	Review Recommendation	Response	Implementation
1.	Remove the licensing and surety requirements for commercial agents and replace them with a requirement that commercial agents be registered and further examine the case for establishing either an appropriate industry compensation fund or compulsory insurance requirements.	No decision taken. Following the passage of the proposed *Private Security Bill* in the Autumn 2004 session, it is proposed to transfer portfolio responsibility for commercial agents to the Minister for Consumer Affairs. The primary purpose of the regulatory regime governing commercial agents is to protect those consumers who are subject to debt collection processes. Consumer Affairs Victoria is responsible for a range of social regulatory functions and consumer protection is central to its mission.	Following the transfer of portfolio responsibility, Consumer Affairs Victoria will further consider the nature of the regulatory regime that should apply to commercial agents. As an interim measure, the proposed Bill preserves the current licensing arrangements for commercial agents.
1.	Review the exemptions from the Act's licensing regime.	In preparing the proposed *Private Security Bill*, the current exemptions have been reviewed.	The proposed *Private Security Bill* extends exemptions from the Act to further groups, eg.people who in the course of their employment with a non-security employer install, maintain or repair security equipment.
1.	Remove the Magistrate's Court as issuer of commercial agents' licences and transfer those regulatory and administrative functions to the Registrar.	No decision taken.	This is subject to the outcome of consideration by Consumer Affairs Victoria of the nature of the regulatory regime that should apply to commercial agents (see recommendation 1A).

Rpt No	Review Recommendation	Response	Implementation
1.	Reform the licence fees to make them cost-reflective of the administrative costs of the legislation.	Accepted	Completed. The *Private Agents Regulations 2003* established licence fees to reflect cost recovery. Regulations under the proposed Bill will also set fees on a cost recovery basis.
1.	Encourage the development of a national model of private agents regulation to be followed by all Australian States and Territories, and administered by a central regulator/administrator with State/Territory offices, with a mechanism that ensures any later amendments are automatically adopted by the States and Territories.	Accepted in principle	Mutual recognition provisions and agreement across jurisdictions by Police Ministers in relation to training requirements make this unnecessary.
2.	Licensing based on character and competency should be introduced for security consultants, alarm and Closed Circuit Television (CCTV) installers.	Regulation of these occupational categories through compulsory registration has been approved in principle.	Compulsory registration based on character checks, but not competency requirements, will be incorporated into the proposed *Private Security Bill* for these occupational categories.
2.	"High end" locksmiths should be subject to licensing based on both character and competency.	Not accepted. Considered that the risk to the public is not substantial enough to justify the costs associated with licensing.	
2.	Bodyguards should be subject to licensing based on both character and competency.	Licensing of bodyguards has been approved in principle.	Licensing of bodyguards based on character and competency requirements will be incorporated into the proposed *Private Security Bill*.
2.	Process servers should be subject to licensing based on both character and competency, with the emphasis on character.	Not accepted. Considered that the risk to the public is not substantial enough to justify the costs associated with licensing.	
2.	Two tier licensing regime (businesses versus sole operators/employees) provides an appropriate degree of control and flexibility.	Accepted	Proposed *Private Security* Bill will establish a system of Primary (business) and Nominated (individual) licences and registrations.

No	Restrictions on Competition Remaining	Competition Policy Justification
1.	Licensing of commercial agents, security guards and firms, inquiry agents and crowd controllers. The proposed *Private Security Bill* will also extend licensing to bodyguards.	Benefits to the community of the restriction outweigh the costs, having regard to the public interest. The public benefit argument to support the restrictions relates primarily to the potential harm that persons who are of bad character working in the security industry cause the public or their clients through their access to confidential information.
2.	The proposed *Private Security Bill* will extend registration requirements to alarm and CCTV installers and security consultants.	The argument to support the restrictions relates primarily to the potential harm that persons who are of bad character working in the security industry can cause to the public or their clients, through their access to confidential information e.g. a person with a history of burglary installing home security systems, or a person with terrorist links installing security systems at an airport.

Travel Agents

Legislation:	***Travel Agents Act 1986***	**Portfolio:**	Consumer Affairs
Reviewer:	Consultant (Centre for International Economics)	**Date Review Completed:**	March 2000
Consultation:	Submissions invited on public issues paper; direct discussions with key stakeholders	**Date Response Released:**	February 2003

No	Review Recommendation	Response	Implementation
1	Remove entry qualifications for travel agents.	Not accepted, but specific qualification requirements to be reviewed.	Review of qualification requirements near completion. Regulations to be made before June 2004.
2	Replace compulsory membership of the Travel Compensation Fund (TCF) with a competitive insurance system, whereby private insurers compete with the TCF.	Mandatory compensation scheme will be retained, but TCF to review its contribution arrangements for different types of travel agencies, with a view to establishing a risk based premium structure, and its prudential and reporting requirements, with a view to making these more equitable.	Review of contribution arrangements to be completed.
3	Change the current licence exemption threshold.	Accepted	Replacement Order in Council in preparation.
4	Remove the Crown exemption.	Accepted	Act to be amended in Autumn 2004.

No	Restrictions on Competition Remaining	Competition Policy Justification
1	Entry qualifications.	Note that the only qualifications required relate to ticketing. Consumers of travel services, especially those travelling overseas, are particularly vulnerable to unusual and potentially serious problems, eg being stranded at a remote location due to an incorrect flight booking.
2	Requirement for TCF membership.	Risks in relation to continuity of private supply, premium levels, price volatility and risk minimisation strategies of private insurers.

Table 3: Review complete response not announced

Architects and Building

Legislation:	***Architects Act 1991, Building Act 1993***	**Portfolio:**	Planning
Reviewer:	Consultant (Freehills Regulatory Group)	**Date Review Completed:**	February 1999
Consultation:	Targeted consultation, working groups conducted	**Date Response Released:**	

No	Review Recommendation
1	Retention of title restriction and registration requirements for architects
2	Ownership provisions be amended to ensure that in firms which use the title “architect”, or hold themselves out as offering architectural services, at least one director or partner is a qualified/practising architect.
3	Constraints on acting as developer and architect on same project, on using the title “architect” when carrying on the business of developer and on advertising as an architect when acting for a developer should be repealed. Amended regulations to require an architect, acting as both developer and architect, give the client notice in writing of the scope of his or her different roles.
4	Repeal the specific prohibition on architects endorsing, for profit, a specific building material, component, service or product, but retain other regulations that achieve the same benefits at a lower cost.
5	Repeal specific constraints on accepting financial advantages from suppliers, contractors and tradespeople of the project, except as a client, but retain other regulations that achieve the same benefits at a lower cost.
6	Repeal exemptions for public sector employed architects provisions to ensure that all architects, including private and public sector employees, are treated equally by the provisions.
7	Repeal constraints on seeking business from clients of other architects because contract law provides adequate redress for an architect in the event of breach by a client.
8	Do not consider provisions regarding general standards of professional conduct create a restriction on competition.
	Do not find regulation regarding working for a developer amounts to restriction on competition, but there is no apparent need or justification for it.

No	Review Recommendation
	Do not consider that regulation regarding correctness of advertising material adds additional obligations over and above common law and Trade Practices Act 1974 (TPA) obligations.
	Do not consider that regulation regarding disclosure of identity of architects amounts to a restriction on competition (but) no apparent need or justification.
9	To improve monitoring and enforcement, recommendation that companies and partnerships be subject to registration requirements. All practitioners whether sole or employed (should be) required to be registered (except) the building practitioner employees of adequately insured companies and partnerships. Registration levels and compliance levels should be reported by the Building Practitioners Board (BPB) and should be a key performance indicator. Regulatory Impact Statements should be prepared.
10	Recommend retention of the Minister's power to issue compulsory insurance orders.
11	Recommend ongoing use of audits of building surveyors to ensure that standards are maintained and fostered. Recommend that consideration be given to conducting a study into the case for integration of the planning permit application process and building permit provisions.
12	Recommend the repeal of provisions which grant exemptions to public sector employees, public authorities and the Crown. Recommend retention of those provisions which exempt certain high security Crown buildings from the requirement to lodge permit documents with the relevant council. The Crown exemption in respect of the re-erection of any relocatable building used as a school should be retained.
13	Recommendation that the building permit levy should be based on a formula that is cost-reflective and includes incentives for cost effective administration of the legislation. Suggestion of practitioner registration fees paid to Building Practitioners Board. Recommend that the regulatory bodies develop Key Performance Indicators. Suggestion that the Government consider undertaking a review of regulatory bodies
14	Do not recommend amendments to the following provisions: • owner-builder limitations; • essential services provisions; • accreditation of building products; • Minister's power to issue guidelines; • time constraints applying to building work; and • regulation of places of public entertainment and temporary structures.
15	Net benefits can be obtained from the integration of the Architects Legislation and Building Legislation. The experience and effectiveness of the Architects Registration Board of Victoria (ARBV) should assist amalgamation of the ARBV and the Building Practitioners Board (BPB).

Pharmacists

Legislation:	***Pharmacists Act 1974***	**Portfolio:**	Health
Reviewer:	External review – for COAG.	**Date Review Completed:**	February 2000
Consultation:	Senior Officials Working Group Report on National Review released in August 2002. Discussion paper released by Victoria August 2002 and submissions currently being considered.	**Date Response Released:**	

No	Review Recommendation
	The following summarises some of the main national recommendations incorporated into Victorian Discussion Paper. Refer to the national review report for a complete list of recommendations.
1	Legislative restrictions on who may own and operate community pharmacies are to be retained (confined to registered pharmacists).
2	Remove residential requirements for pharmacy ownership. Retain requirements that pharmacists must be registered in a jurisdiction in order to own a pharmacy – pending adoption of national arrangements.
3	Retain pharmacy ownership structures, and in addition, corporations with shareholders of defined types.
4	Lift restrictions on the number of pharmacies a person may own or have interest in, but monitor effect of lifting restriction on market; retain requirements that pharmacists must be in charge of, or under direct supervision of, a registered pharmacist.
5	Friendly societies may continue to operate pharmacies, but no new friendly societies to be owned, established or operated; all corporately owned pharmacies to be restricted under grand parenting provisions. Refer financial and corporate arrangements of pharmacist and friendly-society owned pharmacies to the ACCC and take into account findings in legislative reform.
6	Retain some form of restriction on the number of pharmacies as outlets for the Pharmaceutical Benefits Scheme (PBS). Parties to the Australian Community Pharmacy Agreement consider, in the interests of greater competition in community pharmacy, a remuneration system for PBS services that restricts the overall number of pharmacies by rewarding more efficient pharmacy businesses and practices.

No	Review Recommendation
7	Pharmacy remains a registrable profession, and that legislation governing registration should be the minimum necessary to protect the public interest by promoting the safe and competent practice of pharmacy. Legislative requirements restricting the practice of pharmacy, with limited exceptions, to registered pharmacists are retained. Legislative limitations on the use of the title “pharmacist” and other appropriate synonyms for professional purposes are retained. Legislative requirements for a registered pharmacist, to have particular personal qualities, other than appropriate proficiency in written and spoken English, and good character, are removed. Legislative requirements for membership of a professional association or society as being necessary for registration as a pharmacist are removed. Legislative requirements specifying qualifications, training and professional experience needed for initial registration as a pharmacist are retained, but States and Territories should move towards replacing qualifications-based criteria with solely competency-based registration requirements if, and as appropriate, workable assessment mechanisms can be adopted and applied.

Drugs, Poisons and Controlled Substances

Legislation:	***Drugs, Poisons and Controlled Substances Act 1981*** (DPCS legislation)	**Portfolio:**	
Reviewer:	External reviewer–review for COAG	**Date Review Completed:**	Submitted to COAG in January 2001. COAG referred report to Australian Heath Minister Conference (AHMC) and Australian Heath Ministers Advisory Council (AHMAC) to an AHMAC Working Party, which has sought comments from jurisdictions and stakeholders but is yet to report.
Consultation:	Sought as part of review process, including written submissions and meetings with stakeholders in all jurisdictions	**Date Response Released:**	Victorian Government response will be released after review recommendations are endorsement by COAG.

No	Review Recommendation
	The following summarises some of the main recommendations from the national review. Refer to the national review report for a complete list of recommendations.
1	*Objectives of Legislative Framework* State and Commonwealth governments to amend the preamble to legislation as the opportunity arises
3	*Objectives of scheduled medicines* Legislation covering the supply of scheduled medicines should explicitly set out its objectives.
4	*Adoption by jurisdictions of the Standard for the Uniform Drugs and Poisons (SUSDP) Schedules* In interests of uniformity & to minimise costs, all states should adopt all the scheduling decisions in the SUSDP by reference
5	*Medicines schedules & associated support* Funds be made available from the Pharmacy Development Fund to commission independent research that provides baseline data & evaluation
7	*Administrative arrangements for scheduling* That the National Drugs & Poisons Scheduling Committee be disbanded & replaced with 2 separate committees, one responsible for medicines (Medicines Scheduling Committee) and other for agricultural, veterinary & household chemicals (Poisons Scheduling Committee).
8	*Vending machines* Prohibition on supply of scheduled medicines by vending machines be located in drugs & poisons legislation. Also, sale of unscheduled medicines be made available through vending machines subject to certain restrictions.

No	Review Recommendation
11	*Informational advertising of scheduled medicines* In interests of uniformity, all state legislation be repealed & Commonwealth *Therapeutic Goods Act 1989* should be the principal legislation that controls advertising of medicines for human use. Also recommends that Commonwealth Act be amended to cover particular situations.
12	*Supply of sample packs of medicines & poisons* Concerns both the supply of samples of medicines to health professionals and supply of certain poisons to general public.
13	*Schedule 5 & 6 licences* Provisions in State legislation applying to licences for Schedules 5 & 6 be repealed.
14	*Licensed wholesalers* Retention of all current requirements in both Commonwealth & State legislation applying to wholesale licences for products in Schedules 2, 3, 4 & 8. Also that there be uniform requirements across States legislation, Customs regulations and the *Narcotic Drugs Act 1967* (Commonwealth).
15	*Licensed poisons sellers* Persons holding Poison Licences which permit the retail sale of Schedule 2 products in remote areas where there is not pharmacy be allowed to sell the full range of products in Schedule 2.
16	*Recording & reporting* Current recording of the sales of narcotic drugs be retained. Also retention of recording of wholesale sales of products in Schedules 2, 3 & 4. Also recommends that the form of recording should not be mandated so as to allow for electronic recording. Recommended the repeal of legislation that requires the recording of retail sales of substances in Schedules 3, 5 & 6.
17	*Storage controls* Existing provisions relating to storage of Schedule 8 products at both wholesale & retail level be retained. Similarly it has recommended that provisions for storage of Schedules 2, 3 & 4 products at retail level be retained. Also legislation be framed to identify the intended outcome of the storage requirements.
18	*Handling controls* Code of Good Wholesaling Practice Conduct be strengthened to ensure the risk of poisoning & diversion of substances to the illicit market is minimised during transport. Also, legislation be amended to make compliance with the Code mandatory.
20	*Improving administrative efficiency of the controls* Legislation be amended to provide for mutual recognition of administrative decisions in relation to exemptions from labelling & packaging. Exemptions usually relate to products that have been reclassified in the Poisons List or to products that are imported but only on a small scale as a service line.
22	*Commonwealth legislation* Recommended that Commonwealth legislation be the prime legislation responsible for all controls on advertising, packaging and labelling of human medicines.
23	*Complementary therapeutic goods legislation* In the interests of uniformity, all states adopt the *Commonwealth Therapeutic Goods Act1989* by reference.

No	Review Recommendation
24	*Uniform national model legislation* In the interests of uniformity, that for the controls that remain a state responsibility, model legislation should be developed and adopted by references by the States. Existing legislation should be repealed.
25	*Repeal of State & Territory legislation* Repeal existing legislation relating to controls on labelling, packaging, advertising and access restrictions, licences, recording, reporting, storage, handling and supply of clinical samples of medicines.
26	Harmonising the labels of poisons & workplace chemicals Products be more clearly identified to distinguish between those whose principal intended use is in the workshop and those whose intended principal use is domestic. Product labelling depends on this distinction, as the safety requirements are different.

Table 4: Review expected to be delayed

Trade Measurement

No	Legislation	Portfolio	Scheduled Completion Date	Expected Completion Date	Comment
1	*Trade Measurement Act 1995* [5] (model Uniform Trade Measurement Legislation)	Consumer Affairs	2004	Approval of proposed response by the Ministerial Council on Consumer Affairs (MCCA) by June 2004. Any legislation arising from the review would be implemented once the national approach was finalised.	Scoping Paper completed and assessed August 2001 broadly considered that restrictions on methods of sale (relating to meat, beer and spirits, and pre-packaged goods) appear to have little if any adverse impact on competition but provide benefits to consumers. The paper's concerns regarding the costs of restrictions on the sale of non-prepacked meat have been examined through a separate public benefit test. Other restrictions on competition are considered to be sound, imposing few costs while potentially generating widespread and significant benefits. These restrictions relate to the oversight of measurement standards, the prohibition of end-and-end weighing at public weighbridges and the licensing of services organisations and public weighbridges. The COAG Committee for Regulatory Reform has assessed the final review documents advising that they meet NCP requirements and that the Committee has no objection to the documents being considered by the MCCA for public release and further consultation. Queensland has completed the final report on the review and will forward it to MCCA for endorsement and public release. The February 2004 election in that State has delayed the process.

[5] Formerly under Department of Innovation, Industry & and Regional Development