# 12 Victoria

## A3 Fisheries

### *Fisheries Act 1995*

In the 2003 National Competition Policy (NCP) assessment, the National Competition Council concluded that Victoria had reviewed the Fisheries Act, and had implemented only some of the reforms recommended by the review. The key outstanding matters were:

- fishery management costs, for which the review recommended that the government introduce full cost recovery
- limits on the number of persons that a licence holder may employ, for which the review recommended further review
- minimum and maximum quota holdings and transfer restrictions in the abalone fishery, for which the review recommended removal or reduction
- pot controls in the rock lobster fishery, for which the review recommended removal (provided enforcement costs are sustainable).

The government has since made substantial further progress. In April 2004 it began to phase in the full recovery of fishery management costs from users. The phase-in will be completed in 2006. The government has also announced that it will implement the review recommendation to remove quota holding and transfer controls currently applying in the abalone fishery.

Further consideration of two other matters has resulted in decisions against reform. Employee limits on holders of licences in certain input managed fisheries will be retained to help control effort, and in the abalone fishery to assist enforcement.

In relation to the rock lobster fishery, caps on the number of pots per boat and pots in total will be retained, as the government believes that removing these caps is likely to increase various costs:

- stock losses — having longer periods between pot lifts is expected to lead to higher rock lobster losses due to in-pot predation by octopus
- harm to wildlife — having more pots is expected to increase seal injury and mortality through both attempted entry to pots and entanglement with lost gear

- fishing costs — individual fishers may attempt to exclude other fishers from high catch rate fishing ground through using more pots.

At the time of reporting the Council had not had sufficient opportunity to complete its examination of the evidence presented by the government in support of its decision to retain rock lobster pot controls.

The Council assesses that Victoria is still to completely fulfil its Competition Principles Agreement (CPA) clause 5 obligations arising from the Fisheries Act. Subject to there being sufficient evidence for retaining rock lobster pot controls, Victoria will have met these obligations when it has completed removing quota holding and transfer restrictions in the abalone fishery..

# A5 Agricultural and veterinary chemicals

### *Agriculture and Veterinary Chemicals (Victoria) Act 1994*

Legislation in all jurisdictions establishes the national registration scheme for agricultural and veterinary (agvet) chemicals, which covers the evaluation, registration, handling and control of agvet chemicals up to the point of retail sale. The Australian Pesticides and Veterinary Medicines Authority administers the scheme. The federal Acts establishing these arrangements are the *Agricultural and Veterinary Chemicals (Administration) Act 1992* and the *Agricultural and Veterinary Chemicals Code Act 1994*. Each state and territory adopts the Agricultural and Veterinary Chemicals Code into its own jurisdiction by referral. The relevant Victorian legislation is the Agricultural and Veterinary Chemicals (Victoria) Act.

The federal Acts were subject to a national review (see chapter 19). Because the Australian Government has not completed reform of the national code, the reform of state and territory legislation that automatically adopts the code has not been completed. The Council thus assesses that Victoria has not met its CPA obligations in relation to this legislation.

### *Agriculture and Veterinary Chemicals (Control of Use) Act 1992*

Beyond the point of sale, agvet chemicals are regulated by ‘control of use’ legislation. This legislation typically covers the licensing of chemical spraying contractors, aerial spraying and uses other than those for which a product is registered (that is, off-label uses).

A national review examined ‘control of use’ legislation for agvet chemicals in Victoria, Queensland, Western Australia and Tasmania. Victoria has implemented the review recommendations, including the removal of the requirement for mandatory insurance for ground spraying businesses. However, it considers there are public interest reasons for retaining the

requirement for aerial sprayers to hold an approved public liability insurance policy. Victoria argues that aerial spraying is a higher risk activity than ground spraying because it is carried out in areas or conditions in which ground spraying could not be done, especially in the case of herbicides for noxious weed control. Victoria has indicated its support for a national scheme for aerial spraying, and will continue to work towards the establishment of such a scheme. Victoria has also indicated that it would be willing to reconsider the insurance requirement for aerial spraying once a national working group that is examining the issue has made its recommendations.

The Council notes Victoria's position that mandatory insurance for aerial sprayers is in the public interest, and the government's undertaking to reconsider its position following the report of the national working party on this issue. The Council considers that Victoria has completed review and reform activity as far as possible.

The Council thus assesses Victoria as having complied with its CPA obligations in this area, while noting that the report of the national working party examining licensing conditions for aerial spraying businesses may recommend further change.

## A9 Mining

### *Extractive Industries Development Act 1995*

In October 2001 Victoria released the report of an independent review of its Extractive Industries Development Act. The review recommendations included:

- amending the Act to allow the Minister to approve a work plan and set conditions
- allowing conditions to be appealable by applicants to the Victorian Civil and Administrative Tribunal
- removing the requirement for quarry operators to obtain a work authority from the Minister
- having the first level of responsibility for site restoration rest with the work authority holder and the second level rest with the landowner
- encouraging extractive industry associations to take a more active role in industry regulation matters
- discontinuing the certification of quarry mangers over a reasonable time period, so the industry has time to develop its own accreditation process.

Victoria accepted the majority of the review recommendations relating to administrative policy and procedures. Where it did not accept a recommendation, it provided a public interest case for its position, generally finding no link between these recommendations and competition policy concerns. Victoria considered that the abolition of the work authority requirement, for example, would not result in improved administrative efficiency because all the precursor approvals would still be required. Abolition would also reduce certainty that all of the necessary stages and approvals had been satisfied. Victoria did not consider that it would be in the public interest to make the landowner (in default of the work authority holder) responsible for site restoration, because the landowner has no operational control of the activities on the site.

In the spring 2003 session of Parliament, Victoria introduced legislation that implements the government's response to the review. The Council thus assesses Victoria as having met its CPA clause 5 obligations in this area.

## B2 Tow trucks

### *Transport Act 1983*

The Transport Act and associated Regulations allow only licensed tow trucks to operate on highways. The Secretary of the Department of Infrastructure issues licences for trade, accident and heavy towing and assesses the 'need' for an overall number of licences in each region. New licences for accident and heavy tow trucks are issued only if they are consistent with the perceived need. The Victorian Government rejected several of the key recommendations of the 1999 review of the tow truck legislation. It did not accept, for example, that the need restrictions on accident and heavy accident licences should be removed, arguing that an oversupply of tow trucks would lead to 'law of the jungle' conditions at accidents, which would stress accident victims and have an adverse impact on the state's accident attendance allocation system. The government also did not accept that the need criterion should be removed for location restrictions, arguing that such a change could result in certain regions not having adequate truck numbers to attend accidents.

In the 2003 NCP assessment, the Council indicated its concern that the need restrictions may increase accident towing fees by adding to the capital cost of tow truck licences. Accident towing licences in metropolitan areas were worth around $70 000 in 1999, and they rose in value to around $130 000 in 2003. The Council was concerned that this capital cost may outweigh any service quality benefits that consumers gain from the restrictions. Further, Victoria did not demonstrate that the need and location restrictions are the only means of achieving orderly conduct at accident scenes and ensuring adequate tow truck availability in all regions.

In preparing the 2003 NCP assessment, the Council asked Victoria for the public interest evidence for the need based entry restrictions. The government

asserted that the current arrangements work well and that job allocation arrangements would be unworkable as a result of 'the sheer number of operators'. The Council considered that Victoria did not fully account for alternative mechanisms for dealing with public interest concerns in the tow truck industry. Further, Victoria did not show that job allocation arrangements, without the need restrictions, would not effectively moderate tow truck operators' behaviour. The 2003 NCP assessment thus found that Victoria had not met its CPA clause 5 obligations in relation to tow trucks.

Following the 2003 NCP assessment, the Victorian Government reconsidered its tow truck regulatory arrangements, with a view to more cogently arguing that the need restrictions generate net benefits to the community. It commissioned an independent public benefit test to examine whether the need restrictions can be justified on net public benefit grounds, whether there is a dependency between the need and location restrictions and the job allocation arrangements, and whether there are alternative, less restrictive ways of achieving the objectives of the legislation.

The public benefit test report was prepared by the Allen Consulting Group and completed in June 2004 (ACG 2004). Victoria provided the report to the Council in August 2004. This report recommends retention of the quantitative restrictions on accident tow truck licences and their removal in the case of heavy accident tow truck licences.

The report identifies the costs of the accident tow truck licence restrictions as reduced efficiency, increased market power, a flow on of licence values to regulated licence fees and administration costs. The benefits are seen as:

- curbing undesirable behaviour at accident scenes
- helping to ensure tow truck operators are available 'where needed'.

The report considers that these two benefits slightly outweigh the costs, and also factors into its cost–benefit calculations the transitional costs associated with removing the licence restrictions. The report argues that such de-restriction would result in trade tow trucks (for which there almost 700 licences, similar to the number of accident tow truck licences) suddenly competing with accident tow trucks for a declining accident tow market. Towing/repair businesses would be likely to experience deterioration in their trading conditions, and the value of licences would probably fall sharply. Importantly, police evidence to the review argued that such a rapid increase in licence numbers would overwhelm the job allocation system, leading to the 'law of the jungle'.

The Council has some strong reservations about the two benefits argued in the public benefit test report. The Department of Infrastructure operates an Accident Allocation Scheme whereby the Accident Allocation Centre (AAC) allocates the required number of tow trucks to an accident within a geographic zone. The ACC allocates the tow or tows for each accident to the tow truck company ('depot') that has had the smallest number of tows in that month in that zone. As stated by the Allen Consulting Group report, the

Accident Allocation Scheme has improved community safety by eliminating the need for tow trucks to 'race' to accident scenes, cutting back congestion at accident scenes and reducing aggressive or violent behaviour by tow truck operators (ACG 2004, p. ix).

The Council agrees that such roster arrangements generate substantial behavioural benefits to the community. The Council considers that this regulation is warranted and is probably sufficient to yield these benefits. Unlike the report, the Council is not convinced that there is a need for licence restrictions to ensure the operability of the Accident Allocation Scheme and police supervision of accident scene behaviour.[1] However, the report took into account advice from the Victoria Police that the licence restrictions critically underpin adherence to the Accident Allocation Scheme.

In relation to the second 'benefit' of licence restrictions, the Allen Consulting Group report argues that, by increasing tow truck licence values via the restrictions, the government is better able to require the licensees in country areas ('where towing services are more likely to be in short supply') to provide services (the report refers to 'community needs', which are not defined) that would otherwise be unprofitable (ACG 2004, p. vii and p. 24). The Council considers it is unlikely that individuals or companies that pay large sums for tow truck licences because entry is restricted would be more inclined to undertake unprofitable activities than tow truck operators who had to pay less for licences in unrestricted markets.

The Council considers that the review has not demonstrated strongly that the licensing restrictions on accident tow trucks provide a net public benefit to the community. The review report itself relies substantially on the transitional costs of licence de-restriction to argue against such a change. However, in making its overall assessment, the Council has taken into account:

- the transitional costs associated with de-restriction
- the fact that police have argued that the licence restrictions are vital to the efficacy of the accident allocation scheme
- the likelihood that de-restriction may not yield significant benefits for consumers because:

---

1 South Australia is the other jurisdiction that has operated a roster system for many years and has not supplemented the roster with a quantitative restriction on tow truck numbers. The Accident Towing Roster Review Committee determines the number of roster positions in each zone in South Australia, but the NCP review in that state argued that there is no justification in terms of competition principles for restricting entry to the zone rosters. The South Australian Government has accepted this recommendation.

- tow truck fees are regulated and current fee levels suggest that high licence values (which may reflect both scarcity and the capacity to access the smash repair industry) are not adversely inflating charges
- the roster system (for which there is a clear public benefit) of itself reduces the scope for tow truck operators to innovate or offer a differentiated service
- there is currently overcapacity in the industry.

On balance, the Council assesses that Victoria has met its CPA obligations in relation to the review and reform of tow truck legislation. Nevertheless, the Council considers that, in the absence of the transitional costs, the need for licence restrictions to operate in tandem with the accident allocation system remains in doubt. Therefore, the Council encourages Victoria to look to ultimately move to a system that retains the demonstrated public benefits of the accident allocation system without supplementation through a barrier to entry.

## B6 Ports and sea freight

### *Port Services Act 1995*

The Russell Review focused on the Port Services Act, which established new corporatised entities as successors to the old port authorities. The review examined the structure and operation of Victorian ports. The government released the review report and its response in July 2002, then began to implement 22 actions. A key review recommendation was to reintegrate the land and water management of commercial trading ports to enable them to better compete with interstate ports.

The *Port Services (Port of Melbourne Reform) Act 2003* was the first piece of legislation that the government introduced to implement the actions arising from the Russell Review. Passed on 13 May 2003, this Act established a new, integrated corporation to manage the port of Melbourne from 1 July 2003 — that is, it replaces the Melbourne Port Corporation with the Port of Melbourne Corporation. The Minister's second reading speech stated that the new legislation 'will clearly vest in the new Port of Melbourne Corporation management responsibility for the waters which serve the port, including the shipping channels in those waters' (Batchelor 2003).

The 2003 NCP assessment found that review and reform activity was incomplete because the government had not introduced the second Bill to implement the review recommendations. The Minister introduced this Bill — the Port Services (Port Management Reform) Bill — to Parliament in October 2003. Enacted on 11 November 2003, this legislation addresses remaining issues arising from the Russell Review, including arrangements for the establishment, classification and management of commercial and local ports;

port safety, security and environmental obligations; new governance arrangements for the port of Hastings; the management of channels serving the port of Geelong; and the holding and licensing of channels generally.

The Council considers that Victoria has met its CPA clause 5 obligations in relation to the Port Services Act.

# C1 Health professions

*Pharmacists Act 1974*

The Council of Australian Governments' (CoAG) national processes for reviewing pharmacy regulation recommended that jurisdictions remove restrictions on the number of pharmacies that a pharmacist can own, and allow friendly societies to operate in the same way as other pharmacists (see chapter 19). No restrictions apply to friendly societies in Victoria, so compliance with CoAG recommendations requires the state only to remove restrictions on the number of pharmacies from the Pharmacists Act.

The Victorian Government released a discussion paper in August 2002, inviting comment on the implementation of CoAG compliant outcomes for Victoria. On 11 May 2004, the government introduced the Pharmacy Practice Bill 2004 into Parliament, increasing to five the number of pharmacies that a pharmacist could own. The Bill continued to allow friendly societies to own an unlimited number of pharmacies.

Debate on the Bill was subsequently withdrawn to enable the government to take into account advice from the Prime Minister, dated 1 June 2004, that Victoria would not attract a competition payment penalty if it adopted pharmacy ownership reforms similar to those in New South Wales.

The reforms contained in the Pharmacy Practice Bill 2004 as introduced, if implemented, would fall short of those required by CoAG national review processes. While the number of pharmacies that a pharmacist can own under the Act would increase from three to five, CoAG outcomes require that jurisdictions remove such restrictions.

The Council assesses that Victoria has not met its CPA obligations in this area as review and reform activity is incomplete. If Victoria implements the pharmacy regulation amendments contained in the Pharmacy Practice Bill, the Council will assess the state as failing to comply with its CPA obligations in relation to this profession.

## C2 Drugs, poisons and controlled substances

### *Drugs, Poisons and Controlled Substances Act 1981*

Following the outcome of the Galbally Review (see chapter 19), the Australian Health Ministers Council endorsed a proposed response to the review's recommendations. CoAG is now considering the proposed response out of session. Victoria intends to implement the review recommendations following CoAG endorsement.

The Council accepts that jurisdictions are considering the Galbally report at the national level through CoAG. However, because the Galbally reforms have not yet been implemented, Victoria has not yet met its CPA obligations in this area.

## D Legal services

### *Legal Practice Act 1996*

Following the 1995 review of the *Legal Profession Practice Act 1958*, the state adopted a suite of competition reforms by introducing the Legal Practice Act. It also committed to review monopoly provision arrangements for public indemnity insurance in light of any national scheme developed by the Standing Committee of Attorneys-General (SCAG). Chapter 19 provides further information on this interjurisdictional review process.

SCAG is continuing to develop a professional indemnity insurance scheme that will facilitate interstate practice. In the interim, insurance requirements vary across jurisdictions. Victoria has advised that subject to the outcome of national processes, the state proposes to retain the Legal Practitioners Liability Committee as the statutory insurer for legal practitioners (except for barristers).

Unlike professional indemnity, which is subject to ongoing national processes, no reform has been considered for whether non-legally qualified conveyancers should be able to perform some or all of the legal work involved in conveyancing transactions. In the 1999 NCP assessment, the Council considered that Victoria had complied with its CPA commitments to legal practice review and reform (except in relation to some unresolved matters relating to the professional indemnity insurance monopoly) (NCC 2003b, p. 4.10). This position was based partly on Victoria's 1999 NCP annual report, which reported that the Legal Practice Act provides for non-lawyers 'to carry on a conveyancing business' (Government of Victoria 1999, p. 6).

However, following representations from Victorian conveyancers, it has become apparent that the Act allows conveyancers to compete only in the

nonlegal aspects of conveyancing. Subsequently, on 29 September 2003, the Council sought clarification from Victoria on whether the recommendation of the 1995 report of the Attorney-General's Working Party was acted on — specifically, the recommendation that the Legal Ombudsman be required to report on whether non-legally qualified conveyancers should be able to perform some or all of the legal work involved in conveyancing transactions. The Victorian Department of Treasury and Finance response of 16 March 2004 indicated that the Victorian Government did not accept the recommendation and noted that the report was not a report of the then government, but rather reflected the views of the Attorney-General's Working Party. However, the department confirmed that provisions to replace the Legal Practice Act were being reviewed, including provisions in relation to conveyancing businesses.

On 24 March 2004 the Council secretariat wrote to the State Government outlining its position on conveyancing restrictions. It noted that the Council's finding of compliance, based on a misperception arising in the context of the 1999 assessment, could no longer stand because:

- the continuation of this restriction reduces the potential benefits to consumers
- the restriction is not consistent with practices in most other jurisdictions.

The secretariat accepted that the State Government was reviewing the Bill to replace the Legal Practice Act. However, it advised Victoria to remove the conveyancing restriction or provide an independent and robust public interest case for the net community benefit from retaining this restriction. The Department of Treasury and Finance response of 6 May 2004 confirmed that conveyancing practice restrictions are being considered as part of the review of a Bill to replace the Legal Practice Act but it did not specifically address the Council's concerns.

This matter is currently the subject of discussion within government but no final position has been taken.

Victoria has made significant reforms to legal profession regulation, except in areas of professional indemnity insurance and removal of reservations on conveyancing practice.

While the Council notes that reforms to professional indemnity insurance are subject to national processes, the removal of reservations on conveyancing practice is not. Rather, it is subject to a review process which is unrelated to formal NCP processes.

There is no compelling evidence from other jurisdictions that conveyancing practice reservations reduce risks to consumers (refer to Baker 1996). Indeed, conveyancing costs fell by 17 per cent in New South Wales between 1994 and 1996 following the removal of the legal profession's monopoly on conveyancing, while no attendant quality problems have arisen. Victoria should therefore remove conveyancing restrictions or expedite its Legal

Practice Act review processes. Any review outcome to retain the restriction will need to also clearly and transparently demonstrate the public interest in its retention.

The failure to address conveyancing practice restrictions is of key concern to the Council. When coupled with ongoing national processes for professional indemnity insurance, the Council assesses the state as not yet having achieved compliance with CPA obligations in relation to the legal profession.

## E Other professions

### *Private Agents Act 1966*

Freehills Regulatory Group completed an NCP review of Victoria's Private Agents Act in 1999. The review recommended retaining occupational licensing for security providers and making further efforts to develop a national regulatory model for the industry. It recommended replacing licensing requirements for commercial agents with a 'light handed' registration scheme (combined with greater use of trade practices/fair trading legislation to deal with problem operators) and reforms of the commercial agents' surety scheme. The review also recommended reviewing whether the exemptions provided to certain occupational groups are still appropriate.

The government delayed its response to the NCP review while it conducted a broader policy review of the Act and undertook further consultation. In May 2004 Parliament passed a Bill to implement legislative changes arising from the NCP review. The Council thus assesses Victoria as having met its CPA obligations in this area.

### *Travel Agents 1986*

Governments are taking a national approach to reviewing their travel agent legislation. The Ministerial Council on Consumer Affairs commissioned the Centre for International Economics, overseen by a Ministerial council working party, to review legislation regulating travel agents. The findings of the review and the working party response are outlined in chapter 19.

Victoria did not support the original review recommendations to remove entry qualifications for travel agents or to replace compulsory membership of the Travel Compensation Fund with a competitive insurance system, whereby private insurers compete with the Travel Compensation Fund.

Victoria 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 as a result of an incorrect flight booking. Further work on qualifications has been undertaken at a national level and the Ministerial

council has endorsed new limited qualification requirements which will apply only to travel agents selling overseas travel.

Victoria is retaining the requirement for Travel Compensation Fund membership, given uncertainties about the continuity of private supply, the stability of premium levels and the potential for the fund to be forced to become insurer of last resort under the proposed competitive model.

Victoria passed the Estate Agents and Travel Agents Acts (Amendment) Bill in May 2004 that gives effect to the working party's findings by removing the Crown's exemption from the need to be licensed as a travel agent when carrying on the business of a travel agent. Regulations to implement national changes to qualification requirements are to be made before the end of 2004.

The Council assesses that Victoria has not met its CPA obligations in relation to travel agents legislation because it has not completed reform in this area.

## F1 Compulsory third party motor vehicle and workers' compensation insurance

*Transport Accident 1986*
*Accident Compensation Act 1985*
*Accident Compensation (Workcover Insurance) Act 1993*

In Victoria, statutory monopolies provide compulsory third party and workers' compensation insurance. Second reviews of compulsory third party and workers' compensation insurance were finalised in 1999 and 2000 respectively, reversing the first reviews' recommendations for multiple provision. In its 2003 NCP annual report, the Victorian Government informed the Council that it would review the scope for greater contestability in the provision of the two insurances via further outsourcing ('market testing') by the Transport Accident Commission and the Victorian WorkCover Authority. The Transport Accident Commission has recently re-tendered its internal audit, financial analysis modelling, asset consulting, tax advisory, vocational care and community care services, and has undertaken further market testing of some other service areas. The Victorian WorkCover Authority has re-tendered its outsourced claims management services, resulting in 30 per cent of employers changing agents and two overseas agents entering the market. It has also re-tendered its actuarial and advertising services.

The second NCP reviews had recommended third party reviews of the Transport Accident Commission and Victorian WorkCover Authority premiums, and the government considered the mechanism for such reviews for some time. In April 2003, the Essential Services Commission advised the government that the expected revenue associated with the Transport Accident Commission's proposed premium for 2003-04 is consistent with the solvency of the transport accident compensation scheme. The Essential

Services Commission will review the premium of the Victorian WorkCover Authority for the first time in 2004-05.

For reasons outlined in chapter 9, the Council has not assessed Victoria's compliance with its CPA obligations in this area for the 2004 NCP assessment.

## H3 Trade measurement legislation

*Trade Measurement Act 1995*
*Trade Measurement (Administration) Act 1995*

Each state and territory has legislation that regulates weighing and measuring instruments used in trade, with provisions for prepackaged and non-prepackaged goods. Regulated instruments include shop scales, public weighbridges and petrol pumps. State and territory governments (except Western Australia) formally agreed to a nationally uniform legislative scheme for trade measurement in 1990, to facilitate interstate trade and reduce compliance costs (see chapter 19). Because the national review and reform of trade measurement legislation has not been completed (see chapter 19), the states and territories involved (including Victoria) have yet to meet their CPA obligations in regard to trade measurement legislation.

The Council thus assesses Victoria as not having met its CPA clause 5 obligations in relation to its trade measurement Acts because it has not completed its reforms.

## I3 Gambling

*Tattersall Consultation Act 1958*
*Public Lotteries Act 2000*

After reviewing the Tattersall Consultations Act, Victoria repealed this Act and replaced it with the Public Lotteries Act. The new legislation initially allowed for multiple lottery licences from 2004, when Tattersall's exclusive licence was due to expire. In the 2002 NCP assessment, the Council assessed Victoria as meeting its CPA obligations in relation to lottery legislation.

However, in 2003 Victoria extended Tattersall's exclusive licence until 2007. The extended licence was granted on the basis that Tattersall's agrees with the Gaming Minister on a format that discloses the costs of operating its gaming related licences in Victoria, so as to create greater transparency in financial reporting. Victoria remains concerned that any move to increase licence numbers is likely to limit economic benefits for Victoria when every other state has a sole licensed operator. Victoria also considers that the larger

prize pools and larger jackpots resulting from a single seller increase player interest and ticket sales. Further, it has stated that it will seek the cooperation of New South Wales in facilitating a national market once the exclusive licence in New South Wales lapses in 2007. It also flagged its intention to issue public lottery licences after July 2007 through a transparent, contestable, competitive tender.

In the 2003 NCP assessment, the Council considered that these considerations did not constitute a sufficient public benefit argument for extending exclusivity, and it assessed Victoria as not having complied with its CPA obligations in relation to lotteries. While the Council retains this assessment, it does not regard the noncompliance as significant, recognising that Victoria has established the conditions for multiple provision of lottery services and the opportunity for a national market after 2007.

## J2 Building regulations and approval

### *Building Act 1993* (provisions relating to building approval)

The Building Act allows competing public and private agents to certify building work. Private building surveyors must meet entry requirements, be registered and have professional indemnity insurance. Victoria completed its review of the Act in 1999. The review (which also considered the *Architects Act 1991*) was conducted by the Freehills Regulatory Group. The government did not complete its response to the review until after the Council had finalised the 2003 NCP assessment, which concluded that Victoria's review and reform activity in this area was incomplete.

For building permits, the review recommended the continued auditing of building surveyors to maintain standards, and the integration of aspects of the planning permit and building permit application processes. The government supported this recommendation in its December 2003 response. It considered the review in conjunction with its assessment of the Architects Act, partly to account for opportunities to integrate Victoria's building and architects legislation. Victoria introduced amendments to the two Acts to Parliament on 4 May 2004 in the Architects (Amendment) Bill, which Parliament passed on 2 June 2004. Also in 2004, the government intends to consider those recommendations of the NCP review of the Building Act that would require increased regulation (recommendations relating mainly to building practitioner registration — see below). The Building Commission released an industry discussion paper in September 2003 that indicates that Victoria will prepare a regulatory impact statement before revising building regulation.

The Council assesses Victoria as having met its CPA clause 5 obligations in this area.

# J3 Building occupations

### *Architects Act 1991*

Victoria did not participate in the 2000 Productivity Commission review of state and territory legislation that regulates the architectural profession, having subjected its Architects Act and subordinate legislation to an independent NCP review in 1998-99 (which also addressed Victoria's Building Act — see above). At the time that the Council completed the 2003 NCP assessment, Victoria had not announced its response to the review, and the Council thus assessed the state's review and reform activity as being incomplete.

The government released its response in December 2003, accepting the recommendations to retain title restriction and registration requirements for architects and to require at least one director or partner of architectural businesses to be registered as an architect. Victoria implemented the review recommendations of the joint architects and building legislation review concurrently in the Architects (Amendment) Bill, which Parliament passed on 2 June 2004. Among other things, this legislation:

- increases the membership of the Architects' Registration Board from eight to 10 members to include two members with building industry experience and to provide that neither consumer representatives nor industry representatives may be architects
- relaxes the restriction imposed by limiting the use of terms such as 'architecture' and 'architectural', while ensuring persons describing themselves as architects are registered as such
- reduces the requirement that architects comprise two-thirds ownership or control of a partnership or company practising architecture, so that now only at least one director or partner must be a registered architectural practitioner.

Victoria has completed the reform process, and the Council assesses it as having met its CPA obligations.

### *Surveyors Act 1978*

Victoria's review of the Surveyors Act was completed in July 1997. It recommended retaining restrictions on entry, removing surveyors' domination of the Surveyors Board, changing entry requirements to allow surveyors to gain practical training through course work, reducing some commercial restrictions and reducing barriers to the interstate mobility of surveyors.

The Victorian Government substantially accepted the 12 review recommendations that required government action. It implemented the five

recommendations that did not require legislative change. The Land Surveying Bill 2001 addressed the other seven recommendations, but lapsed in November 2002 when Parliament was prorogued for an election. When the Council completed the 2003 NCP assessment, the government had not re-introduced the legislation and the Council found that Victoria's review and reform activity was incomplete.

The Surveying Bill 2004, which was based on the Land Surveying Bill and accounted for comments received in a consultative process, was passed by Parliament on 3 June 2004. The Council thus assesses Victoria as having met its CPA clause 5 obligations.

### *Building Act 1993* (provisions relating to building practitioners)

Victoria completed a review of the Building Act in 1998-99. Recommendations included integrating the Act with the Architects Act, making all building companies and partnerships subject to registration requirements, and retaining the Minister's power to issue compulsory insurance orders. Minor changes to the Building Act — relating to insurance and the requirement to include a member of the Architects Registration Board on the Building Practitioners Board — were included in the Architects (Amendment) Bill, which Parliament passed on 2 June 2004. The Building Commission is reviewing submissions to the 2003 discussion paper that considered the NCP review's recommendations for increased regulation of the building industry in some instances. In addition to the recommendation that all building companies and partnerships be registered, the review recommended that all building practitioners, whether sole traders or employed, be required to be registered unless employees of adequately insured companies and partnerships.

The Building Commission proposes to release a position paper on possible new Regulations in 2004. Victoria has stated that revisions to legislation will be based on thorough consideration of the submissions received, and the 2003 discussion paper indicated that Victoria will prepare a regulatory impact statement before introducing revised building Regulations.

The Council considers that Victoria has met its CPA obligations for this Act, but expects the government to apply its gatekeeping process to any new building legislation and Regulations that may be introduced following the consultation process.