12 Victoria

A3 Fisheries[1]

Fisheries Act 1995

The Victorian Government retained ACIL Consulting to independently review the Fisheries Act. The most important recommendations of the review, which reported in 1999, were that the government:

- review alternatives to nontransferable fishing licences
- grant access licences for longer than one year
- introduce full recovery of fishery management costs and consider introducing royalties or rent taxes
- consider allocating new licences and quota by auction, tender or ballot
- remove minimum and maximum quota holding restrictions in the abalone fishery
- move from input controls to output controls (quota) in the rock lobster fishery.

The government has accepted and implemented most recommendations.

Nontransferable licences are being phased out as fishery management plans are reviewed, and guidelines have been developed for the competitive allocation of new licences. In April 2004, the government began to phase in the full recovery of fishery management costs from users. The phase-in will be completed in 2006. This year, the government has a Bill before Parliament to remove abalone quota holding and transfer restrictions.

In relation to the rock lobster fishery, the government introduced a quota management system in 2001. However, it decided to retain caps on total pots and pots per boat because it expected that allowing fishers to use more pots would increase:

- the loss of rock lobster due to more in-pot predation by octopus as the period between lifts of each pot lengthens

[1] The alpha-numeric descriptors for legislation review subject areas are listed in chapter 9, table 9.11.

- the frequency of injury and mortality to protected species such as seals, dolphins and whales

- gear and fuel costs if fishers attempt to exclude each other from high catch rate fishing ground.

The Council accepts that removing the cap on pots per boat is likely to increase lobster stock loss, but the total allowable catch can account for this, protecting the sustainability of the fishery. Further, the cost may be offset by savings from more efficient use of labour and capital.

In relation to harm to protected species, the fishery management plan notes, 'Interaction between rock lobster fishing gear and protected species of wildlife is extremely rare in Victoria. There have been no confirmed reports of mortality of whales or dolphins attributed to rock lobster fishing gear in Victorian waters' (Fisheries Victoria 2003). The Council also understands that seal mortality due to fishing debris entanglement is unlikely to greatly affect the recovery of seal populations.

In relation to the behavioural response of fishers, the government has agreed to seek information from New Zealand, where pot caps have not been used for some years.

The Council assesses that Victoria will have fulfilled its Competition Principles Agreement (CPA) clause 5 obligations arising from the Fisheries Act when it has:

- removed quota holding and transfer restrictions in the abalone fishery

- removed pot caps in the rock lobster fishery or shown they are in the public interest.

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 Australian Government Acts were subject to a national review (see chapter 19). The national processes established to implement the legislative reforms arising from the review have yet to complete their work. Until changes to these Acts are finalised, the reform of state and territory legislation that automatically adopts the code cannot be completed.

The Council thus assesses that Victoria has not met its CPA obligations in relation to this legislation.

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 applied to friendly societies in Victoria, so compliance with COAG recommendations requires the state only to remove from the Pharmacists Act restrictions on the number of pharmacies.

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 to Parliament, increasing to five the number of pharmacies that a pharmacist could own. The Bill when introduced did not alter current ownership provisions in relation to friendly societies, but did tightly define a friendly society for the purposes of ownership of pharmacies. The key requirements of the new definition means that only companies that were registered or incorporated as a friendly society before 1 July 1999, have at least 100 members and operate on a not for profit basis will be able to own pharmacy businesses.

The purpose of tightening the definition of a friendly society is to prevent individuals purchasing defunct friendly societies and demutualising as a means to breach the cap on pharmacy ownership. At the time the bill was introduced there was one business that owned over 40 pharmacies that the government anticipated would not meet the requirements. The Government proposed that the pharmacy board assess each friendly society and any organisation failing the mutuality requirements be given 12 months to divest its interest or restructure.

Debate on the Bill was subsequently held over to enable the government to consider 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 government subsequently amended the Pharmacy Practice Bill 2004 to cap the number of pharmacies that a friendly society may own. The *Pharmacy Practice Act 2004*,

which implements the reforms, received royal assent on 16 November 2004. Provisions in the Act permit friendly societies that owned less than six pharmacies before 16 November 2004 to expand to six pharmacies over the subsequent four year period. Friendly societies that own more than six pharmacies will be able to increase ownership by up to 30 per cent over the same four year period. Following the four year transition period the government has proposed that it will conduct a review to determine if the caps are performing according to Victorian community standards.

The reforms implemented by Victoria in the Pharmacy Practice Act fall short of those required by COAG national review processes. While the number of pharmacies that a pharmacist can own under the Act has increased from three to five, COAG outcomes require that jurisdictions remove such restrictions. Victoria has also imposed new restrictions on friendly society pharmacies. Provisions in the Act relating to controls over the practice of pharmacy also depart from the recommendations of the COAG Senior Officials Working Group, but are consistent with Victoria's NCP obligations.

The Council assesses that Victoria has failed to meet 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 that COAG has now endorsed. The proposed response provides for each jurisdiction's implementation of the recommendations over a 12-month period from July 2005, the date of COAG's endorsement.

Victoria has implemented all recommendations from the review that could be done without national cooperation and/or prior action by the Australian Government. It has amended the Drugs, Poisons and Controlled Substances Act to automatically adopt the Standard for the Uniform Scheduling of Drugs and Poisons schedules by reference, repealed the requirement for manufacturers and wholesalers to obtain licences to handle schedule 5 and 6 poisons, and implemented changes to allow the Code of Good Wholesaling Practice to be adopted when finalised. The government is developing other required reforms through it's involvement with the National Co-ordinating Committee on Therapeutic Goods (NCCTG).

The Council acknowledges that implementation of the Galbally reforms is imminent. However, because the reforms are still outstanding, the Council assesses that Victoria has not 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*, Victoria adopted a suite of competition reforms by introducing the Legal Practice Act. The state introduced reforms to improve the regulation of the legal profession and implement national model law provisions with the passing of the *Legal Profession Act 2004*, which replaces the 1996 Act.

The Legal Profession Act does not contain significant reforms to professional indemnity insurance because this matter is yet to be resolved at the national level (see chapter 19). It does, however, extend professional indemnity insurance provisions to cover multidisciplinary partnerships and incorporated legal practices. Section 3.5.2(5) of Act also permitted barristers to apply for insurance with the Legal Practitioners' Liability Committee and gave the committee the power to refuse to provide that insurance. It is now superseded by s3.5.2(7), under which the Victorian Bar Council has resolved that all barristers must insure with the committee. This outcome is in line with the PricewaterhouseCoopers NCP review recommendation that Victoria should retain the existing compulsory professional indemnity insurance arrangements, but extend the availability of coverage to barristers. PricewaterhouseCoopers found that this approach has practical benefits: it provides for high quality comprehensive cover with ongoing and universal run-off and dishonesty cover, which can be achieved with lower and more stable premiums and stronger incentives (than under a competitive insurance model) to invest in risk-management programs (PWC 2004).

Victoria has 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.

Part 7.1 of the Legal Profession Act covers conveyancing businesses. The provisions in the Act are unchanged from the Legal Practice Act. In the 1999 NCP assessment, the Council considered that Victoria had complied with its CPA commitments in relation to the conveyancing profession (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, representations from Victorian conveyancers made the Council aware that Victoria's legal profession legislation allows conveyancers to compete only in the nonlegal aspects of conveyancing. Subsequently, on 29 September 2003, the Council sought clarification from Victoria on whether it had acted on the recommendation of the 1995 report of the Attorney-General's Working Party—specifically, the recommendation that the government require the Legal Ombudsman to report on whether nonlegally 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 advised that the Victorian Government had not accepted the recommendation of the Attorney-General's Working Party. The department also 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 government outlining its position on conveyancing restrictions. It noted that the Council's finding of compliance, based on a misperception in the context of the 1999 NCP assessment could no longer stand because:

- the continuation of conveyancing restrictions reduces the potential benefits to consumers
- the restrictions are not consistent with practices in most other jurisdictions.

The secretariat advised Victoria that it needed to remove the conveyancing restrictions or provide an independent and robust public interest case for the net community benefit from retaining the restrictions. The Department of Treasury and Finance response of 6 May 2004 confirmed that conveyancing practice restrictions were being considered as part of the review of the Legal Practice Act but the review did not specifically address the Council's concerns. The review, completed by PricewaterhouseCoopers in May 2004, noted that the regulation of conveyancing would involve complex, interrelated matters and that a full assessment of the benefits and costs of reserving legal work associated with conveyancing services to legal practitioners would require a comprehensive review of the regulation of conveyancing services, including the legal work associated with conveyancing transactions. PricewaterhouseCoopers recommended that the current regulatory approach be retained until a new regulatory scheme, if any, was developed for conveyancers.

On 10 November 2004, the Attorney-General and the Minister for Consumer Affairs jointly announced a review of the regulation of Victoria's conveyancing industry. (This announcement followed the closure of Grove Conveyancing for suspected fraudulent activity resulting in estimated client losses of up to $9 million.) One purpose of the review, conducted by The Allen Consulting Group was to assess the efficiency and effectiveness of the current regulatory regime for conveyancers and consider options for reform. The consultants released a discussion paper in March 2005, which sought comments on the extent of work that conveyancers should be able to perform in relation to land transactions. They presented a final report (not yet public) to the Department of Justice in July 2005.

The Council notes, however, that other jurisdictions have not found compelling evidence to support conveyancing practice reservations. The NCP review of legal practice legislation in Queensland, for example, found that a full law degree is not necessary for achieving the objectives of the legal practice legislation with respect to conveyancing. It considered that people

who have the knowledge and practical training to competently perform conveyancing services should be permitted to compete in the market for conveyancing work subject to having adequate professional indemnity and fidelity insurance (Department of Justice 2003). Moreover, a New South Wales study found that conveyancing fees 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 (Baker 1996).

Victoria is potentially forgoing significant benefits from reform by failing to expedite its review and reform of conveyancing practice restrictions. The Council notes, however, that Victoria has made significant reforms in other areas of legal profession regulation and has continued to progress matters in the area of professional indemnity insurance, which are subject to national processes.

In light of Victoria's progress in addressing conveyancing practice restrictions coupled with ongoing national processes for professional indemnity insurance, the Council assesses that Victoria has failed to achieve compliance with CPA obligations in relation to the legal profession.

E Other professions

Travel Agents Act 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.

The current status of Victoria's response to each recommendation is as follows:

- *Recommendations to remove entry qualifications for travel agents.* Victoria reported in 2004 that it did not support the removal of qualification requirements, but that specific requirements would be reviewed. The state's 2004 NCP annual report presented arguments for retaining entry qualifications for work relating to fares and ticketing for overseas travel. New reduced qualification requirements were introduced by the Travel Agents (Amendment) Regulations 2004, which took effect from 1 January 2005.

- *Recommendation to introduce a competitive insurance system*. In its 2004 report to the Council, Victoria presented its arguments in favour of retaining compulsory Travel Compensation Fund membership. It proposed to retain the mandatory compensation scheme and undertake a review with a view to establishing a risk based premium structure. The Travel

Compensation Fund conducted this review in 2004, finding that risk based weighting of premiums would not be feasible because historical claims data do not disclose any clear predictors of risk.

- *Recommendation to change the current licence exemption threshold.* A variation to the existing Order-in-Council to effect an increase in the turnover threshold for licence exemption to $50 000 will be completed by the end of September.

- *Recommendation to extend the operation of the Act to the Crown.* This was implemented in May 2004 by the *Estate Agents and Travel Agents (Amendment) Act 2004.*

The Council accepts Victoria's position on qualification requirements and the retention of compulsory Travel Compensation Fund membership and looks to Victoria to complete its reforms by the foreshadowed change to the licence exemption threshold. Because this reform is yet to be implemented, the Council assesses that Victoria has not met its CPA obligations in relation to travel agents legislation.

F1 Compulsory third party motor vehicle insurance and workers compensation insurance

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

Not assessed (see chapter 9).

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 have 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 trade measurement legislation because it did not complete 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 has expressed concern 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.

The Government conducted a review of the options for the post-2007 lottery industry arrangements and announced the future licensing arrangements in March 2005. The public lotteries licence or licences that will operate after 30 June 2007 will be awarded through a competitive process that will result in the Government granting either an exclusive lotteries licence or up to three non-exclusive licences. The licence or licences issued will be structured to provide flexibility for a national lottery market. These reforms were contained in the Gambling Regulation (Public Lotteries Licensing) Bill 2005, which Parliament passed on 26 May 2005.

In the 2004 NCP assessment, the Council considered that Victoria had not provided a sufficient public benefit argument for extending exclusivity, so 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 lottery services and contributed to the prospect of a national market after 2007.

Non-priority legislation

Table 12.1 provides details on non-priority legislation for which the Council considers that Victoria's review and reform activity does not comply with CPA clause 5 obligations.

Table 12.1: Noncomplying review and reform of Victoria's non-priority legislation

Legislation (name)	*Key restrictions*	*Review activity*	*Reform activity*
Consumer Credit (Victoria) Act 1995	Regulation of the provision of consumer credit	National review completed. The review recommended maintaining the current provisions of the code, reviewing its definitions to bring term sales of land, conditional sales agreements, tiny term contracts and solicitor lending within the scope of the code. The review also recommended enhancing the code's disclosure requirements. The Ministerial Council on Consumer Affairs endorsed the final report in 2002 and referred it to the Uniform Consumer Credit Code Management Committee, which is facilitating the resolution of some issues.	The Standing Committee of Officials of Consumer Affairs is considering a Consultation Draft Bill prepared in order to implement one of the two recommendations for legislative change in the NCP review. Stakeholder feedback will be obtained before the Bill is finalised and put to the Ministerial Council on Consumer Affairs for sign-off and introduction into the Queensland Parliament, the template State for the Code. The other NCP review recommendation, addressing pre-contractual disclosure of key financial information, has also been progressed to consultation draft status. As at September 2005, the Uniform Consumer Credit Code Management Committee is waiting for the New South Wales Chief Parliamentary Counsel, on behalf of the Parliamentary Counsels Committee, to supply the finalised draft of the proposed amending regulations. This draft will be put to stakeholders for feedback on the method of implementation revealed by the detail in the draft.
Crown Lands (Reserves) Act 1978 and related Acts	Leases and licensing that may result in anticompetitive practices	Major public review by external consultants completed. The government conducted another review in 2004 to update the Act and to remove redundant and outdated provisions.	Legislative amendments are expected in 2005-06.
Land Act 1958	Leases and licensing	The government conducted a further review in 2004 to update the Act and to remove redundant and outdated provisions.	Legislative amendments are expected in 2005-06.

(continued)

Table 12.1 continued

Legislation (name)	*Key restrictions*	*Review activity*	*Reform activity*
Therapeutic Goods (Victoria) Act 1994	Licensing, scheduling and labelling of goods	Review completed in June 1999.	Any amendments will be incorporated into possible amendments to the *Drugs Poisons and Controlled Substances Act 1984* to give effect to the outcomes of the national review of that Act. The Trans-Tasman Therapeutic Goods Agency will now start on 1 July 2006. Outstanding reforms await legislative action by the Australian Government.
Trustee Companies Act 1984	Regulation of trustee companies	National review is underway. Standing Committee of Attorneys General (SCAG) released an issues paper and draft Bill in June 2001. Finalisation of the review was dependent on advice from the Australian Government as to whether it would provide for the regulation of trustee companies on a national basis via Australian Prudential Regulation Authority services being provided to the states and territories. The Australian Government declined to do so in early 2003. However, at the SCAG meeting in November 2003, the Australian Government minister agreed to reconsider this issue. New South Wales made a final submission to the Australian Government on behalf of states and territories in February 2004. However, in March 2005, the Australian Government declined to undertake the regulation of trustee companies via the Australian Prudential Regulation Authority.	Now that the Australian Government has confirmed that the Australian Prudential Regulation Authority will not undertake the prudential regulation of trustee companies, states and territories are moving to finalise the reform of the legislation based on the draft model, including seeking external advice on the form that prudential standards could take. New South Wales is the leading jurisdiction in this process.